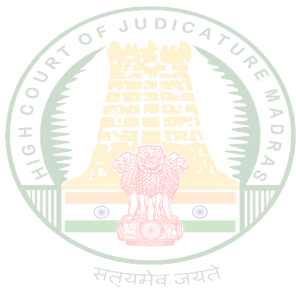

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.03.2022

Orders Pronounced on : **07.04.2022**

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.20083, 16884, 18282, 18320, 18718, 20078, 20082, 20084, 20087, 20089, 20092, 20093, 20098, 20100, 20101, 20104 of 2020, 1925, 1927, 2866, 2870, 4270 and 5511 of 2021 (batch cases)

and

W.M.P.Nos.24786, 22658, 22700, 23248, 23246, 24784, 24785, 24787, 24789, 24791, 24794, 24796, 24800, 24802, 24803, 24806 of 2020, 2171, 2172, 2175, 2174, 3202, 3204, 3205, 3206 and 4874 of 2021

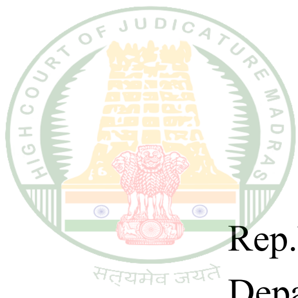
W.P.No.20083 of 2020:

Ms.Preethika.C (Minor)
D/o. Mrs.Sekari S. & Mr.Chandrashekar K. ... Petitioner

Versus

1.State of Tamil Nadu,
Rep.by the Principal Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Fort St.George, Chennai – 600 009.

2.State of Tamil Nadu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Rep.by the Secretary to Government,
Department of Law,
Secretariat, Fort St.George, Chennai – 600 009.

3.Directorate of Medical Education,
Rep.by the Director of Medical Education,
Department of Health and Family Welfare,
#162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.

4.National Medical Commission,
Rep.by the Secretary,
Pocket -14, Sector – 8,
Dwarka Phase – 1,
New Delhi – 110 077. ... Respondents

Prayer in W.P.No.20083 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Declaration or any Writ, order or Direction of the same nature holding that the Tamil Nadu Admission to undergraduate courses in Medicine, Dentistry, Indian Medicine and Homeopathy on preferential basis to students of Government School Act, 2020 (Act No.34 of 2020) passed by the second respondent, is wholly unconstitutional and void *ab initio.* And batch etc.,

In W.P.No.20083 of 2020:

For Petitioner : Mr.Sriram Panchu
for Mr.B.N.Suchindran

For R1 : Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Mr.P.Muthukumar,
State Government Pleader,
Ms.A.G.Shakeenaa

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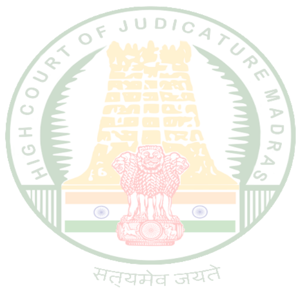
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and Mr.B.Thiyagarajan

For R2	: Mr.Kapil Sabil, Senior Advocate Assisted by Ms.A.G.Shakeenaa and Ms.Anusha Nagarajan.
For R3	: Mr.Amit Anand Tiwari, Additional Advocate General Assisted by Ms.Devyani Gupta

In W.P.No.18320 of 2020:

For Petitioner	: Mr.Fr.Xavier Arulraj
For R2	: Mr.P.Wilson, Senior Counsel Assisted by D.Ravichander, State Government Pleader

COMMON ORDER

D.BHARATHA CHAKRAVARHY, J.

1.The Prayers:

All these Writ Petitions relating to admission to Undergraduate Medical Courses, are taken up together and are disposed off by a common judgment as they are similar and connected to each other. The prayers in these Writ Petitions are in essence the following:

(i) to declare G.O.Ms.No.438, dated 29.10.2020 issued by the first

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respondent as wholly unconstitutional and *Void Ab Initio,* which provided for 7.5% preference/reservation to the students of Government schools in admission to undergraduate medical/dental courses;

(ii) to declare that *The Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on preferential basis to students of Government Schools Act, 2020 (Act 34 of 2020)* passed by the second respondent as wholly unconstitutional and *Void Ab Initio* which provided for 7.5% preference/reservation to the students of Government schools in admission to undergraduate medical/dental courses;

(iii) to declare Section 2(c), 2(d) and 3 of *The Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on preferential basis to students of Government Schools Act, 2020 (Act 34 of 2020)* insofar as it excluded the students of the Government Aided Schools in Tamil Nadu for providing preference on par with the students of Government Schools in Tamil Nadu.

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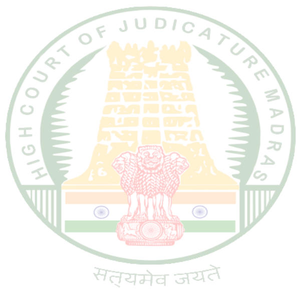

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1.2. From the pleadings of the parties, more particularly the paragraph Nos.5 to 9 of the counter affidavit, it is clear that the above mentioned G.O.Ms.No.438 in the relief (i) mentioned above, dated 29.10.2020 was issued in exercise of the executive powers of the state government under Article 162 of the Constitution of India, when the bill in respect of the impunged enactment mentioned in the relief (ii) above was passed but was pending for assent of the Governor. To meet the urgent needs of making admission for the Academic Year 2020-2021, pending assent of the Governor for the Act, the said Government Order came to be issued. However, within two days of the issue of the aforesaid G.O, the Act received the assent on 31.10.2020 and upon the Act coming into force, the Government order stood superseded/nullified. Therefore, the prayer (i) referred above has become infructuous and therefore, the matter is considered in respect of the reliefs (ii) and (iii) above. We will first proceed to deal with the relief (ii) above and the prayer (iii) will be dealt with in the later part of this judgment.

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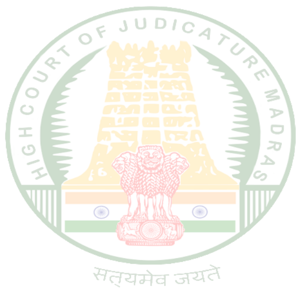

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A. Challenge to the 7.5% Reservation:

2. The case of the petitioners:

2.1. The petitioners in these Writ Petitions are students who have completed 12th standard and are preparing for/or appeared in the National Eligibility-cum-Entrance Test (***NEET*** for short), which is the common admission test prescribed under Section 14 of the National Medical Commission Act, 2019 (**NMC** Act for short) in respect of M.B.B.S., B.D.S., and other undergraduate courses in all the approved/recognised medical/dental and other colleges/institutes in India.

2.2. At present, as per the scheme of the NMC Act, 15% of the seats are filled up under All India Quota by the Central Government through the Common Merit List prepared applying the policies of reservation of the Central Government and the balance of 85% of the seats fall to the State Government quota, by preparing a merit list by following reservation

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policies of the States. Already, the reservation in the State of Tamil Nadu stands at 69% i.e., Schedule Tribes-1%, Scheduled Castes -18%, Most Backward Class-20% and Backward Class-30%. In this, there also is horizontal reservation for Arunthathiyar community within the S.C quota and for Backward Class(Muslims) within the Backward Class quota. The above reservation as such is above the 50% benchmark prescribed by the Hon'ble Supreme Court of India in ***Indra Sawhney Vs. Union of India***[1].

2.3. While the petitioners were preparing themselves for admission under these adverse circumstances, to their disadvantage, the impugned Government Order in G.O.Ms.No.438 was issued on 29.10.2020, providing 7.5% of seats on a preferential basis to students who have studied in Government Schools, from the Academic Year 2020-2021. This was followed by The Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on preferential basis to students of Government Schools Act, 2020 (Act 34 of 2020) (impugned

[1] 1992 Supp (3) SCC 217

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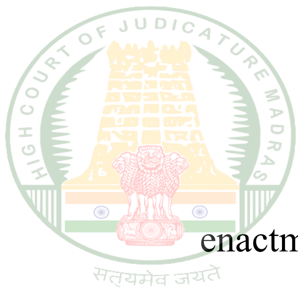
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enactment for short) which was brought into force with effect from 31.10.2020 giving legislative backing for 7.5% reservation to Government School students in medical admissions. The reason for enactment was based on a report by a commission headed by Hon'ble Mr.Justice P.Kalaiyarasan, Retired Judge of High Court of Madras in which the cognitive gap created by socio-economic factors was stated as the basis for providing reservation. The same adversely affects their prospects of admission and hence the Writ Petitions.

2.4. Broadly, the contentions of the Writ Petitioners are, (i) with the prescription of an additional 7.5% of reservation, already, the excess reservation of 69% is further increased and now only 18% is available for Open Category students and therefore, the same is unconstitutional; (ii) When a common entrance test is provided for all the students, giving preference to the students of Government Schools, amounts to discrimination and therefore violates Article 14 of the Constitution of India;

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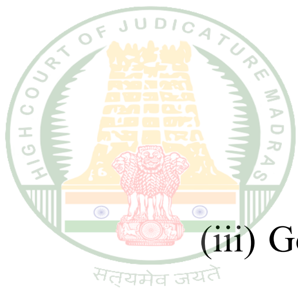
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(iii) Government School students cannot be classified as either socially and educationally Backward Class under Article 15(4) of the Constitution of India or economically weaker section under Article 15(6) of the Constitution of India and therefore, giving preference to the Government Schools' students is violative of Article 15 of the Constitution of India; (iv) Taking into consideration the already existing scheme of reservation, the petitioners were preparing hard for getting into medical courses, but, that legitimate expectation is undone suddenly by the impugned legislation and therefore, the new policy violates the Doctrine of Legitimate Expectation.

3.The case of the State Government:

3.1. A common counter affidavit is filed on behalf of the State of Tamil Nadu. As per the same, on 21.03.2020, under Rule 110 of the Rules of Business of the Government of Tamil Nadu, the Chief Minister of Tamil Nadu made an announcement in the floor of the Legislative Assembly that a commission headed by a Retired Judge of High Court of Madras will be

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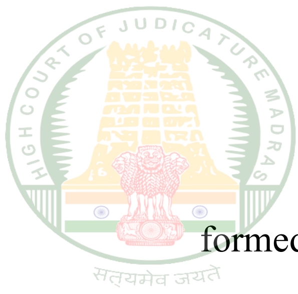
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formed to collect and compile data about the students who are studying/studied from 1st standard to 12th standard in the Government Schools, Corporation Schools, Municipal schools, Adi-Dravidar and S.T Welfare Schools, Kallar reclamation B.C/M.B.C/Differently-Abled Welfare/Forest/Social Defence (Borstal Schools) Department Schools and Residential – Access Schools and to make recommendations so as to enact a suitable legislation to provide quota for them and also to analyse the reasons for the students of such schools in making to the medical courses in very less numbers and to assess their socio-economic conditions and to submit the recommendation within a period of one month to the Government.

3.2. Pursuant to the announcement, by G.O.Ms.No.149, Health and Family Welfare (MCA1) Department, dated 21.03.2020, the commission was constituted under the chairmanship of Hon'ble Mr.Justice P.Kalaiyarasan (Retired Judge, High Court of Madras). The said commission submitted its report to the Government on 08.06.2020 returning findings and

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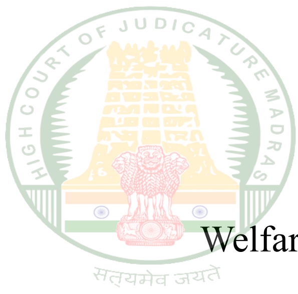
recommendations as required in the reference. The commission *inter alia* recommended that 10% of the seats in admission to medical courses can be set apart on preferential basis by way of horizontal reservation to those students who have studied from 6th to 12th standard in the above schools as per their NEET merit. It further suggested that the arrangement can be reviewed by the State Government after a period of five years.

3.3. The said report of the commission was placed before the Cabinet which held deliberation on 15.06.2020 and on 14.07.2020 and the Cabinet, in its meeting on 14.07.2020, resolved to accept the recommendation of the report of the *Hon'ble Mr.Justice P.Kalaiyarasan* commission by providing 7.5% of seats in the admission to the M.B.B.S.,/B.D.S., and other courses on preferential basis by way of horizontal reservation across all categories to the students who have studied from 6th to 12th standard in the State Government Schools, namely School Education Department Schools including Panchayat Union Primary and Middle Schools, Adi-Dravidar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Welfare Schools, Municipal / Corporation / Tribal Welfare Schools, Kallar reclamation B.C / M.B.C / Differently-Abled Welfare / Forest / Social Defence (Borstal Schools) Department Schools and Residential – Access Schools.

3.4. Based on the above, the Tamil Nadu State Legislative Assembly, passed a bill in L.A.No.24 of 2020 to provide for the above said preference in admissions to undergraduate courses in Medicine, Dentistry, Indian Medicine and Homeopathy for the students who studied in Government Schools and have qualified in NEET and was sent for the approval of the Governor. When the same was pending assent before the Governor of Tamil Nadu in order to meet the exigency to provide for the preferential percentage for the admission to the Academic Year 2020-2021, G.O.Ms.No.438, Health and Family Welfare (MCA1) Department, dated 29.10.2020 was issued in exercise of its executive powers under Article 162 of the Constitution of India. However, immediately on 30.10.2020, the bill received assent of the

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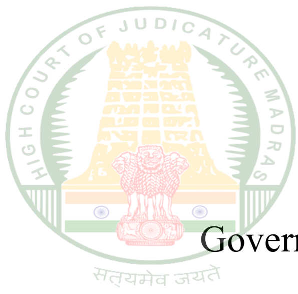
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Governor of Tamil Nadu and was notified in the Government Gazette and was brought into force with effect from 30.10.2020 and as such above Government orders were superseded and Act came into force. Upon implementation of the bill aforesaid in M.B.B.S.,/B.D.S., seats are concerned, out of 5,567 seats, 435 students who had studied 6th to 12th standard in the afore-mentioned schools were benefited for the Academic Year 2020-2021.

3.5. It is the primary contention of the State of Tamil Nadu as per paragraph No.15 of their counter affidavit that as per the detailed report of *Hon'ble Mr.Justice P.Kalaiyarasan* commission, the students were found as socially, educationally and economically backward and therefore, the State Government, finding the need to provide them equal opportunity to establish a level playing field, enacted the impugned Act 34 of 2020, providing them horizontal reservation of 7.5% of the Government seats which is permissible under Article 15(4) and Article 15(5) read with Article 46 of the Constitution

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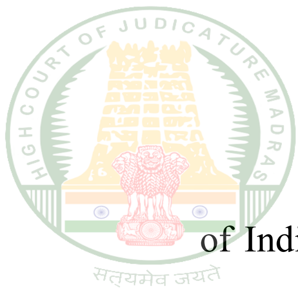
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of India. It is their further contention that the reservation can be provided even under Article 15(1) of the Constitution of India.

3.6. Relying upon the excerpts from the commission's report, which gives details about the impact of NEET, the Gap in Child's Cognitive Development – Affluent vs. Less Fortunate, the disadvantages of the children who are studying in Government Schools in terms of their Caste, Wealth, Parental Occupation, Parental Education, Gender, Social and Psychological Barriers of the Government School students, Advantages of Private School, Economic Challenges of Government School Children and various data collected by the commission and its analysis of the M.B.B.S., admissions showing very negligible data of 0.1% of Government School students after the introduction of NEET and the Relativity of the Student Performance and their School type, comparison of the data with their Social Background, Parental Income Background, Medium of Instruction, Gender Background and the Analysis both Top-Down and Bottom-Up, and

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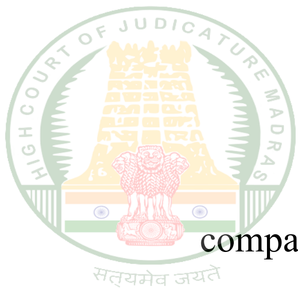
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comparing advantages of Private School students vis-a-vis, the disadvantages of Government School, it is submitted that the impugned enactment was made.

3.7. It is the contention of the State that firstly, the students form a distinct socially and educationally backward class so as to provide them reservation under Article 15(4) of the Constitution of India, apart from the other provisions. The affirmative action is based on the object sought to be achieved namely to provide a level playing filed as impelled by Article 14 of the Constitution of India. The classification is based on intelligible differentia and there is no ground to interfere with the same. The State is entitled to provide such reservation by virtue of their legislative power under Entry 25 of List III and therefore, the impugned legislation does not suffer from any illegality and thus, they pray for dismissal of the Writ Petitions.

4. The Submissions :

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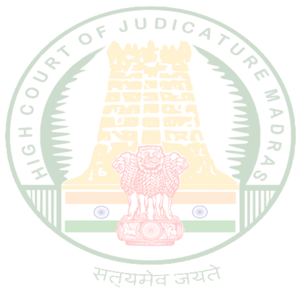
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4.1. Heard *Mr.Sriram Panchu*, learned Senior Counsel appearing on behalf of the petitioners, *Mr.Kapil Sibal*, learned Senior Counsel appearing on behalf of the State of Tamil Nadu, *Mr.R.Shunmugasundaram*, learned Advocate General appearing on behalf of the State of Tamil Nadu, *Mr.P.Wilson*, learned Senior Counsel appearing on behalf of the Department of School Education, *Mr.Amit Anand Tiwari*, learned Additional Advocate General appearing for the Directorate of Medical Education and the other counsel appearing in the matter.

4.2. *Mr.Sriram Panchu*, learned Senior Counsel appearing on behalf of the petitioners would submit that NEET was introduced by the Union from the year 2015 as the sole entrance test for admission to the medical colleges in India and is conducted by the National Testing Agency. While so, finding that many of the Government School students are unable to clear even the minimum cut-off mark and even the few who cleared were not coming within the zone of merit, the State of Tamil Nadu has resorted to the course

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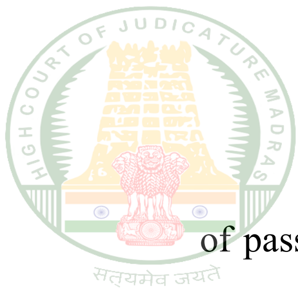
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of passing the impugned enactment which is manifestly violative of Article 14, Article 15, Article 21 of the Constitution of India. He would submit that any kind of preference or reservation should pass the constitutional muster. Constitutionally permissible reservations are kept under Article 15(3) for women and children and Article 15(4) for socially and educationally Backward Class or for Scheduled Caste and Schedule Tribe, under Article 15(6) for Economically Weaker Section after the 103rd Constitutional Amendment, even though the economic criteria was earlier rejected by the majority decision in ***Indra Sawhney Vs. Union of India***[2]. Therefore, so far the permissible reservation under the Constitution of India has been given to those who suffer discrimination by birth, by being woman and for socially disadvantaged groups such as Scheduled Caste, Scheduled Tribe etc., or physical handicap by birth or by an accident. The impugned reservation is given on account of the failure of the State in not providing quality school education as per the mandate in Article 21(A) and thus, the very basis is unjustifiable.

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[2] 1992 Supp (3) SCC 217

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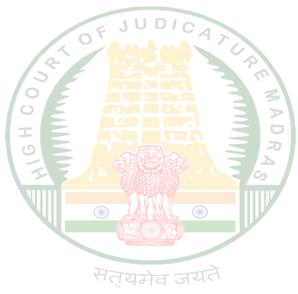

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4.3. The provision of reservation neither satisfies the requirement of the Doctrine of Proportionality nor has any rational nexus to the object sought to be achieved. NEET examination was prescribed by NMC Act which is under Entry 66 of the Union List. The State cannot enact any legislation which dilutes the NEET merit. The present legislation flies on the face of such embargo. The present reservation which is to be applied in the field of medicine has a direct bearing on the health of citizens. When the State is expressly admitting about the cognitive gap, which has to be remedied by providing education and not by admitting less meritorious students and hence the impugned legislation is to be struck down. It is his further submission that even though the impugned legislation provides horizontal reservation, reservation is also provided to the Open quota also and therefore, has the effect of reducing the Open Competition seats from 31% to 23.5% and therefore is illegal.

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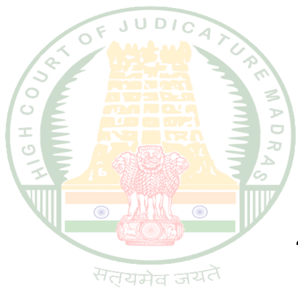

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4.4. For the proposition that reservation which is for the Government School Students, who are not a Socially and Educationally Backward Class and which is beyond 50% benchmark is illegal and would amount to fraud on Constitution, the learned Senior Counsel would rely on the judgment of ***M.R.Balaji and Ors. Vs. State of Mysore and Ors.***[3], by relying on paragraph Nos.21, 24, 29, 31, 34, 35 and 37, which are extracted hereunder:-

> *"**21.** In considering the scope and extent of the expression "Backward Classes" under Article 15(4), it is necessary to remember that the concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes and each one of them may claim to be included under Article 15(4). This position is not disputed before us by the learned Advocate-General for the State. The backwardness under Article 15(4) must be social and educational. It is not either social or educational, but it is both social and educational; and that takes us to the question as to how social and educational backwardness has to determined.*

[3] 1963 Supp (1) SCR 439

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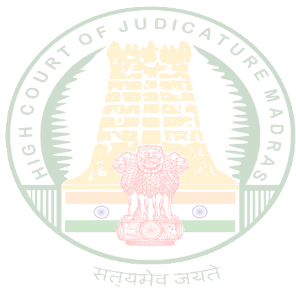
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***24.** The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fell within the purview of Article 15(4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said date in a rational and scientific way. That is the function of the State which purports to act under Article 15(4). All that this Court is called upon to do in dealing with the present petitions is to decide whether the tests applied by the impugned order are valid under Article 15(4). If it appears that the test applied by the order in that behalf is improper and invalid, then the classification of socially backward classes based on that test will have to be held to be inconsistent with the requirements of Article 15(4).*

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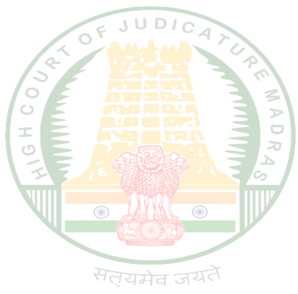
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29. *In this connection, it is necessary to add that the sub-classification made by the order between Backward Classes and More Backward Classes does not appear to the justified under Article 15(4). Article 15(4) authorises special provision being made for the really backward classes. In introducing two categories of Backward Classes what the impugned order, in substance purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced, compared to the most advanced classes in the State, and that, in our opinion, is not the scope of Article 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and More Backward. The classification of the two categories, therefore, is not warranted by Article 15(4).*

31. *When Article 16(4) refers to the special provision for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring*

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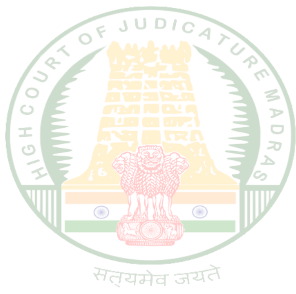
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altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Constitution intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored.

34. *The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society would not affect either the depth or efficiency of scholarship at all, and in support of this argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates from other Backward Classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency in the offices recruited by reservation*

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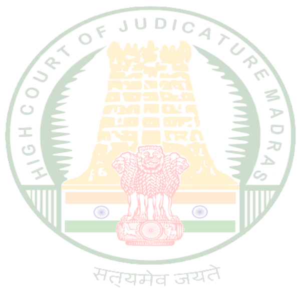
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(p. 135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is unduly liberalised, it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the present prevailing circumstances

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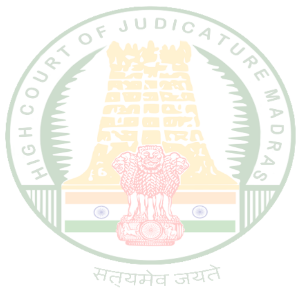
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in each case. In this particular case it is remarkable that when the State issued its order on 10-7-1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between 10-7-1961, and 31-7-1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Article 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations. Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Article 15(4).

***35.** The petitioners contend that having regard to the infirmities in the impugned order, action of the State in issuing the said order amounts to a fraud on the Constitutional power conferred on the State by Article 15(4). This*

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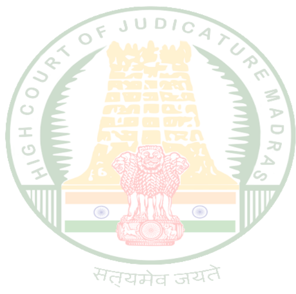

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argument is well-founded, and must be upheld. When it is said about an executive action that it is a fraud on the Constitution, it does not necessarily mean that the action is actuated by mala fides. An executive action which is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf is struck down as being ultra vires the State's authority. If, on the other hand, the executive action does not patently or overtly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, the said action is struck down as being a fraud on the relevant constitutional power. It is in this connection that courts often consider the substance of the matter and not its form and in ascertaining the substance of the matter, the appearance or the cloak, or the veil of the executive action is carefully scrutinized and if it appears that notwithstanding the appearance, the cloak or the veil of the executive action, in substance and in truth the constitutional power has been transgressed, the impugned action is struck down as a fraud on the Constitution. We have already noticed that the impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not permitted by Article 15(4); and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Article 15(4). Therefore, it follows that the

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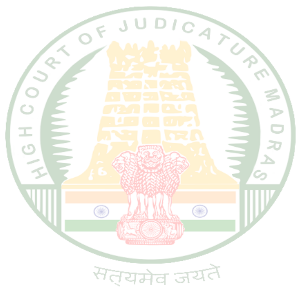
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impugned order is a fraud on the Constitutional power conferred on the State by Article 15(4).

***37.** Whilst we are dealing with this question, it would be relevant to add that the provisions of Article 15(4) are similar to those of Article 16(4) which fell to be considered in the case of General Manager, Southern Railway v. Rangachari [AIR 1962 SC p. 36] . In that case, the majority decision of this Court held that the power of reservation which is conferred on the State under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments, but also by providing for reservation of selections posts. This conclusion was reached on the basis that it served to give effect to the intention of the Constitution-makers to make adequate safeguards for the advancement of Backward Classes and to secure their adequate representation in the Services. The judgment shows that the only point which was raised for the decision of this Court in that case was whether the reservation made was outside Article 16(4) and that posed the bare question about the construction of Article 16(4). The propriety, the reasonableness or the wisdom of the impugned order was not questioned because it was not the respondent's case that if the order was justified under Article 16(4), it was a fraud on the Constitution. Even so, it was pointed out in the judgment that the efficiency of administration is of such a paramount importance that it would*

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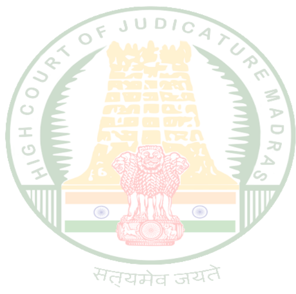
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be unwise and impermissible to make any reservation at the cost of efficiency of administration; that, it was stated, was undoubtedly the effect of Article 335. Therefore, what is true in regard to Article 15(4) is equally true in regard to Article 16(4). There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Article 16(4), care would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Article 15(4), reservation made under Article 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. In this connection it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary."

4.5. He would rely upon the 9 judge bench judgment of ***Indra Sawhney Vs. Union of India***[4] and submitted that the majority view held that

[4] 1992 Supp (3) SCC 217

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allowing the breach of the 50% mark can only be in exceptional circumstances. He would further submit that the impugned legislation came into effect on 31.10.2020 and subsequently, on 05.05.2021, the recent constitution bench in ***Dr.Jaishri Laxmanrao Patil Vs. Chief Minister and Ors.***[5] in the Maratha Reservation Case has reiterated the 50% limit, by relying on paragraph Nos.450, 491 and 512 which are extracted hereunder:-

> *"**450.** We thus are of the view that extraordinary situations indicated in para 810 are only illustrative and not exhaustive but para 810 gives an indication as to which may fit in extraordinary situation.*
>
> ***491.** It is well settled that all legislative Act and executive acts of the Government have to comply with the fundamental rights. The State's legislative or any executive action passed in violation of fundamental rights is ultra vires to the Constitution. The 50% ceiling limit for reservation laid down by IndraSawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] is on the basis of principle of equality as enshrined in Article 16 of the Constitution. In para 808, Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] laid*

[5] 2021 SCC OnLine SC 362

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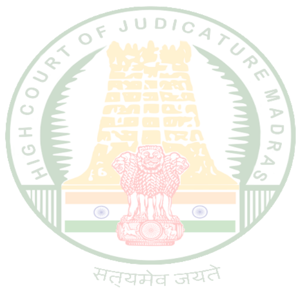
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down : (SCC pp. 734-35)

"808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision — though not an exception to clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision under Article 16(4) — conceived in the interest of certain sections of society — should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr Ambedkar himself contemplated reservation being "confined to a minority of seats" (see his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept."

***512.** We may also notice a recent judgment of this Court in Mukesh Kumar v. State of Uttarakhand [Mukesh Kumar v. State of Uttarakhand, (2020) 3 SCC 1 : (2020) 1 SCC (L&S) 433] , in which one of us L. Nageswara Rao, J. speaking for the Bench laid down the*

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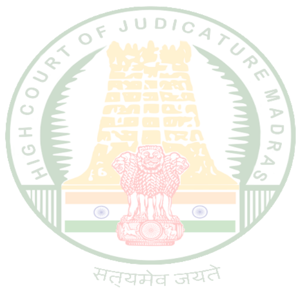
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following in para 13 : (SCC p. 10)

> *"13. ... The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in Barium Chemicals Ltd. v. Company Law Board [Barium Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295] , which need not be reiterated."*

4.6. He would further submit that even though the 105th Amendment of the Constitution of India was brought in to validate the reservation, the 50% benchmark has been left untouched and therefore, the 50% mark being breached by the State of Tamil Nadu, is no more acceptable and thus, the impugned reservation, which is in excess of 50%, should be struck down as ultravires the Constitution.

4.7. He would submit that except the reservation which is permissible under Article 15(4) of the Constitution of India for socially and educationally Backward Classes, various attempts by the Governments to provide reservation on the basis of schooling have been constantly struck

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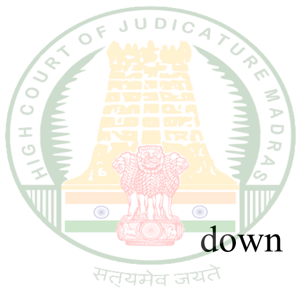
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down by the Hon'ble Supreme Court of India and therefore, the present reservation to the Government School students is impermissible. Strong reliance was placed on the judgment of the Hon'ble Supreme Court in ***State of A.P. Vs. U.S.V Balram, etc.***[6], wherein the reservation of 40% of the seats for higher secondary candidates, after the provision of common entrance test, was held to be violative of Article 14. It was held that such a reservation has no reasonable nexus to the object sought to be achieved. He would submit that the Hon'ble Supreme Court of India has held that Courts have to see whether right conclusions from the data and material collected is reached by the State or not while enumerating the Backward Class. Paragraph Nos.28, 51, 100, 102 relied upon by the learned Senior Counsel are extracted hereunder:

> *"**28.** We are in agreement with the contention of Mr Tarkunde regarding this aspect*
>
> *and, in our opinion, the High Court was justified in striking down the provision regarding reservation of 40 per cent of seats to the H.S.C. candidates under Rule 9. We have already*

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6 (1972) 1 SCC 660

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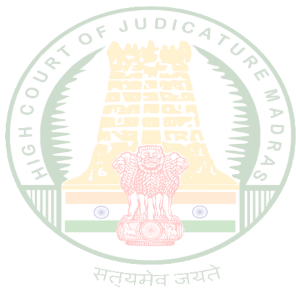
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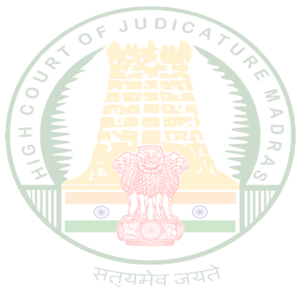
indicated the scheme of the rules as well as the basis for selection, as could be gathered from those rules.

51. *It is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical Colleges; but when once a common entrance test has been prescribed for all the candidates on the basis of which selection is to be made, the rule providing further that 40 per cent of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the* ***said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. The reservation of 40 per cent to the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence we agree with the High Court when it struck down this reservation under Rule 9 contained in GO No. 1648 of 1970 as violative of Article 14.***

100. *The only another aspect that has to be dealt with is the quantum of reservation made for the Backward Classes. It was held in M.R. Balaji v. State of Mysore, that the total of reservation for Backward Classes, Scheduled Castes and*



Scheduled Tribes should not ordinarily exceed 50 per cent of the available seats. In the case before us, under GO No. 1793 of 1970, the total reservation is only 43 per cent. The break-up of that percentage is 25 per cent, 4 per cent and 14 per cent for the Backward Classes, Scheduled Tribes and Scheduled Castes respectively. The quantum of reservation is thus well within the limits mentioned in the decision, referred to above.

102. *To conclude, we agree with the findings of the High Court that reservation of 40 per cent of seats to the H.S.C. candidates to the 1st Year Integrated M.B.B.S. Course under Rule 9 of GO No. 1648 of 1970 is invalid. That provision has been rightly struck down by the High Court. To that extent the judgment and orders of the High Court are confirmed."*

4.8. The learned Senior Counsel would further submit that under similar circumstances, while providing reservation of seats for students studying in rural areas, the Hon'ble Supreme Court of India in the decision of ***State of U.P. and Ors. Vs. Pradip Tandon and Ors.***[7], struck down the reservation, while upholding the quota for students of hill areas alone. The

[7] (1975) 1 SCC 267

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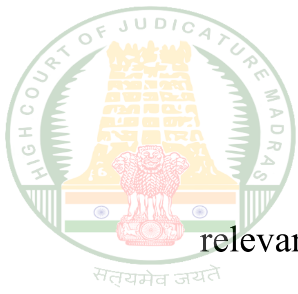
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relevant paragraphs Nos.20, 29, 30, 42 are extracted hereunder:-

> *"**20.** Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttrakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttrakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education.*
>
> ***29.** The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural area and had a permanent home there, and is residing there or*

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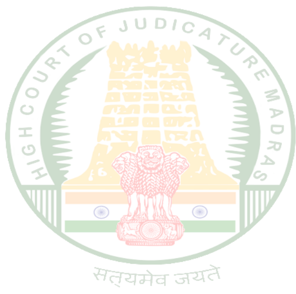

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that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15.

30. *The onus of proof is on the State to establish that the reservations are for socially and educationally backward classes of citizens. The State has established that the people in hill and Uttrakhand areas are socially and educationally backward classes of citizens.*

42. *For these reasons we hold that the reservation in favour of candidates from rural areas is unconstitutional. The reservations for the hill and Uttrakhand areas are severable and these are* valid."

4.9. The learned Senior Counsel would further rely upon the judgment in ***Suneel Jatley and Ors. Vs. State of Haryana and Ors.***[8], by placing reliance upon the paragraph Nos.9, 11, 12 and 14 would submit that the classification between rural and urban areas was again struck down as unconstitutional.

8 (1984) 4 SCC 296

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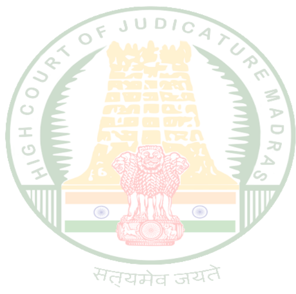
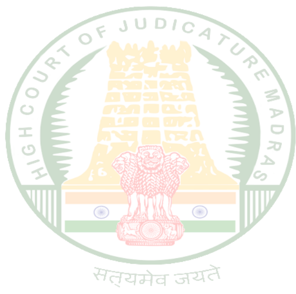


*"**9.** Before anyone becomes eligible to compete for admission to the medical college in the year 1982, it was incumbent upon such a student to clear the twelfth standard examination. This is true in respect of all students seeking admission to medical college irrespective of the fact whether they have been educated in the common rural schools or urban schools. Now the reservation is in favour of candidates from rural areas which expression is amplified to mean "a candidate must have received education from Class I to Class VIII and passed Class VIII examination from a common rural school situated in any village not having any Municipality or Notified Area or town Area Committee". It would at once appear that every candidate seeking admission to medical college must have studied upto the Class XII which would mean that even a candidate coming from the common rural school meaning thereby one who has taken his education upto eighth standard in such a school, yet subsequently he has joined a school which imparts education upto the twelfth standard. Such a candidate has joined a school for a period of 4 years after having come out of the common rural school. It is nowhere suggested that this education for 4 years by a student coming from common rural school is in a school which is either unequal to the urban school or comparatively ill-equipped, ill-housed or ill-staffed. The necessary inference that follows from this is that all students seeking admission to the*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medical college have at least taken education for the last 4 years, in schools which are comparatively similar. What then is the relevance of the education taken from Class I to Class VIII for the purpose of admission to a medical college. It was conceded that the specialised subjects which will qualify a student for appearing at the entrance examination for admission to medical college are to be selected from the eleventh standard onwards. It was also conceded that the syllabus for students from Class I to Class VIII either for urban schools or common rural schools is entirely identical and prescribed by the same authority, and this syllabus includes subjects of general knowledge. It does not provide any specialised knowledge. Therefore, it passes comprehension as to what importance can be attached to education from Class I to Class VIII for admission to medical college which is divided by a span of other 4 years that of Class IX to Class XII (both inclusive) and in respect of which students coming from all schools are similarly situated, similarly circumstanced and similarly placed and similarly treated and exposed to same educational environments without the slightest difference. The question then is: can the previous differentiation, if there be any, provide a rational basis for classification. The answer obviously is in the negative. The knowledge acquired in the years spent from Class I to Class VIII is of a general nature exposing the student to reading, writing, understanding simple arithmetic, general

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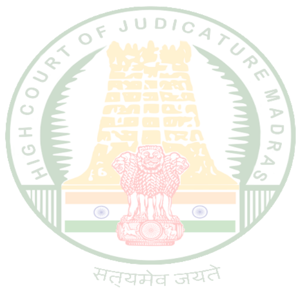

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knowledge of history, geography and introductory mathematics. The introductory knowledge of these subjects could hardly be said to equip a student for admission to medical college. The education imparted in Classes IX and X is little more than introductory. In these classes, the student is being prepared for deeper study. The selection of specialised subjects has to be made in Classes XI and XII and in respect of education in Classes IX to XII, all students being educated in all schools are similarly situated, similarly circumstanced and similarly placed with no differentiation. The earlier handicap of education in classes I to VIII, if there be any, becomes wholly irrelevant and of no consequence and therefore, cannot provide an intelligible differentia which distinguishes persons say students seeking admission being grouped together as having been educated in common rural schools from these left out namely the rest. It would therefore, follow as a corollary that classification based on students coming from common rural schools meaning thereby educated upto first to eighth standard in common rural schools vis-a-vis students educated in urban schools from first to eighth standard would not provide intelligible differentia for founding a classification thereon. The classification in such a situation will be wholly arbitrary and irrational and therefore the reservation based on such a classification would be constitutionally invalid. This view which we are taking finds support from a decision of this Court in Arti Sapru v. State of

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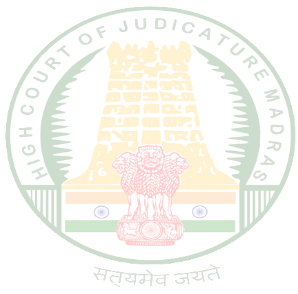
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Jammu and Kashmir [(1981) 2 SCC 484 : 1981 SCC (L&S) 398 : AIR 1981 SC 1009 : (1981) 3 SCR 34] wherein this Court struck down reservation of 20 per cent of the seats to be filled on the basis of inter se merit to ensure rectification of imbalance in the admission for various parts of the State, if any, so as to give equitable and uniform treatment to those parts. The Court following the decision in Pradip Tandon case [(1975) 1 SCC 267 : AIR 1975 SC 563 : (1975) 2 SCR 761] held that the classification attempted by the State suffers from the vice of arbitrariness and must be declared invalid.

11. *Assuming that the decision in Pradip Tandon case [(1975) 1 SCC 267 : AIR 1975 SC 563 : (1975) 2 SCR 761] does not conclude the point as herein raised, the differentia on which the classification is founded appears to us arbitrary and irrational. How arbitrary and irrational it is, can be demonstrably established. In order to take advantage of the reservation students from nearby urban areas can join common rural school on the periphery of urban agglomeration. And all rural schools without an exception cannot be condemned as ill-housed, ill-staffed and ill-equipped. Agriculture in Haryana has been a very profitable pursuit and standard of life of average farmer in rural area has gone up compared to middle class and industrial workers and the slum dwellers whose children will attend*

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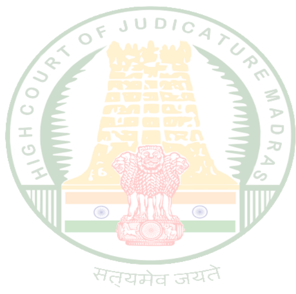
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as a necessity urban schools. And yet the better placed will enjoy reservation. Further the basis of classification based on education upto eighth standard is wholly irrational. And it has no nexus to the object sought to be achieved, of providing extra facility to students coming from rural schools to enter medical college.

12. *What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from first to eighth standard are at a comparative disadvantage to those taking education in urban schools in the same standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education, equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instructions from first to eighth standard. However, as pointed out earlier, the knowledge acquired by the students while taking instructions in Class I to VIII has hardly any relevance to his being equipped for taking the test for entrance to the medical college. The real challenge would come in standard XI and XII. In this behalf all students those coming from common rural school and urban school are similarly placed and similarly situated and yet by a reference to a past event wholly unrelated to the objects sought to be achieved, they are artificially divided.*

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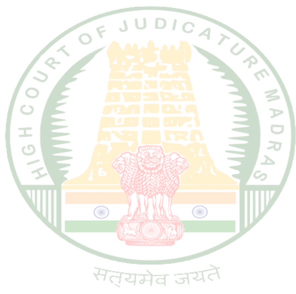

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> ***14.*** *We are therefore satisfied that the classification is not founded on intelligible differentia and at any rate it has no rational nexus to the object sought to be achieved. The classification is irrational and arbitrary. The reservation based on such classification is constitutionally invalid."*

4.10. He would further submit that a learned Judge of this Court in the judgment in ***V.S.Sai Sachin, Minor represented by his father and Natural Guardian, V.Suresh Vs. State of Tamil Nadu and Ors.***[9], had struck down the reservation on the basis of classification of students into C.B.S.E and Tamil Nadu State Board holding it to be impermissible. He would further submit that a Full Bench of this Court in ***Minor S. Muthu Senthil Vs. State of T.N***[10] had already struck down rural reservation provided for medical colleges that too based on recommendation of a high level committee. It was held that such reservations cannot sustain under Article 15(4) and further dissection of reserved classes into rural and urban cannot be

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9 2017 SCC OnLine Mad 2811 : (2017) 4 CTC 337

10 2002 SCC OnLine Mad 57 : (2002) 1 LW 577 (Mad) (FB)

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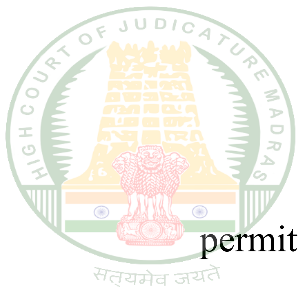
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permitted. Even horizontal reservation cannot be sustained. Therefore, he would pray that the impugned enactment be declared as unconstitutional.

4.11. *Mr.Kapil Sibal*, learned Senior Counsel, leading the arguments on behalf of the State of Tamil Nadu, would submit that 7.5% reservation provided by the impugned legislation for Government School students is for the fact that the Government School students as a class are socially and educationally backward and therefore, is well justified under Article 15(4) and Article 15(5) of the Constitution of India, which specifically save the power of the State to make special provision for advancement of socially and educationally Backward Class and to make provisions in relation to admission to educational institutions, including private educational institutions.

4.12. In this regard, he would submit that as early as in the year 1963, the Constitutional Bench judgment of ***M.R.Balaji Vs. State of Mysore***[11] itself

[11] 1992 Supp (1) SCR 439

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had in paragraph No.17, had categorically held that if the reservation was justified under Article 15(4), then it could not be challenged that it was in violation of Article 15(1) of the Constitution of India. He would submit that this was the view even at the time when Article 15(4) of the Constitution of India was held to be an exception to Article 15(1) of the Constitution of India. The said paragraph No.17 is extracted hereunder:-

> *"**17.** Article 15(4) provides that nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This article was added by the Constitution (First Amendment) Act, 1951. The object of this amendment was to bring Articles 15 and 29 in line with Article 16(4). It will be recalled that in the case of State of Madras v. Champakam Dorairajan & State of Madras V.C.R. Srinivasan [(1951) SCR 526] the validity of the Government Order issued by the Madras Government fixing certain proportions in which students seeking for admissions to the Engineering and Medical Colleges in the State should be admitted, was challenged. The said Government Order was on the face of it a communal order fixing the admissions in the stated proportion by reference to*

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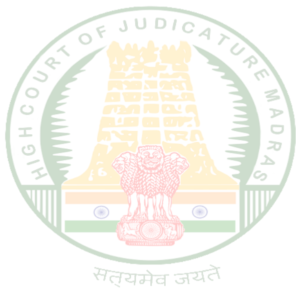
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the communities of the candidates. This order was struck down by the Madras High Court and the decision of the Madras High Court was confirmed by this Court in appeal, on the ground that the fundamental rights guaranteed by Articles 15(1) and 29(2) were not controlled by any exception, and that since there was no provision under Article 15 corresponding to Article 16(4), the impugned order could not he sustained. It was directly as a result of this decision that Article 15 was amended and Article 15(4) was added. ***Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2). In other words, if the impugned order is justified by the provisions of Article 15(4), its validity cannot be impeached on the ground that it violates Article 15(1) or Article 29(2)****. The fundamental rights guaranteed by the said two provisions do not affect the validity of the special provision which it is permissible to make under Article 15(4). This position is not and cannot be in dispute. The petitioners contend that the impugned order is invalid because it is not justified by Article 15(4).”*

4.13. He would further submit that the factors relating to social and educational backwardness of the students who joined the Government Schools has been demonstrated on the basis of scientific data in the report of

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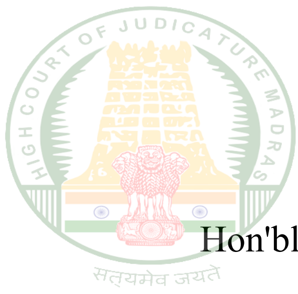
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Hon'ble Mr.Justice P.Kalaiyarasan and once the test is met, no challenge on the ground of discrimination is sustainable and when the Constitution Bench in ***M.R.Balaji Vs. State of Mysore***[12] itself in paragraph No.24, had acknowledged that the problem of identifying socially Backward Class is very complex involving social, sociological and economic consideration and holding that it requires the collection of data in scientific way which is the function of the State. The said paragraph No.24 is extracted hereunder:-.

> *"**24.** The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fell within the purview of Article 15(4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria*

[12] 1992 Supp (1) SCR 439

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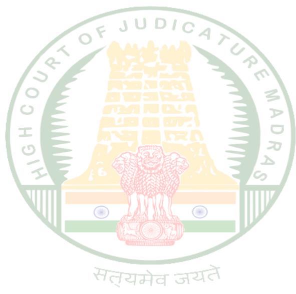
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for determining which classes are socially backward is obviously a very difficult task; ***it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way. That is the function of the State which purports to act under Article 15(4)****. All that this Court is called upon to do in dealing with the present petitions is to decide whether the tests applied by the impugned order are valid under Article 15(4). If it appears that the test applied by the order in that behalf is improper and invalid, then the classification of socially backward classes based on that test will have to be held to be inconsistent with the requirements of Article 15(4).”*

4.14. *Mr.Kapil Sibal*, the learned Senior Counsel would further submit that the constitutional jurisprudence has since developed after ***M.R.Balaji and Others Vs. State of Mysore and Others***[13]**,** holding that reservation is no longer an exception to Article 14 or under Article 15(1), but, is a facet thereof and therefore, the present enactment has to be decided on that premise.

[13] 1992 Supp (1) SCR 439

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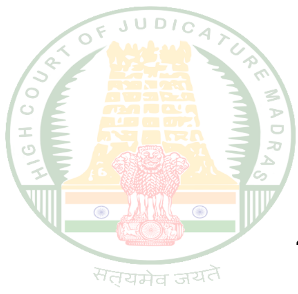
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4.15. Placing strong reliance in the recent judgment of the Hon'ble Supreme Court of India in ***Neil Aurelio Nunes and Ors. Vs. Union of India and Ors.***[14], he would submit that the Hon'ble Supreme Court of India had, after tracing the developments in the law relating to reservation, held that the binary of merit and reservation has now become superfluous as it has recognised the principle of substantive equality as the mandate of Article 14 and as a facet of Articles 15(1) and 16(1) of the Constitution of India. The learned Senior Counsel would rely on paragraph Nos.29, 31, 32, 33, 36 and 77 of the said judgment, to submit that the Hon'ble Supreme Court of India has further elaborated on how a narrow definition of merit based only on the results of the examination without consideration of giving weightage backward factors is opposed to the concept of equality. The said paragraphs are extracted hereunder:-

> *"**29.** Even if the judges differed on whether Article 16(1) is individual-centric or group-centric, they nonetheless accepted that Article 16(4) is crucial to achieve substantive equality that is envisaged under Article 16(1). Articles*

[14] 2022 SCC OnLine SC 75

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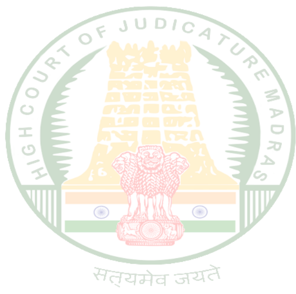
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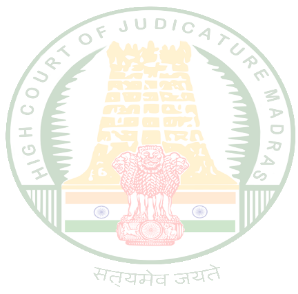
16(4), 15(4), and 15(5) employ group identification as a method through which substantive equality can be achieved. This may lead to an incongruity where individual members of an identified group may not be backward or individuals belonging to the non-identified group may share certain characteristics of backwardness with members of an identified group. ***However, this does not change the underlying rationale of the reservation policy that seeks to remedy the structural barriers that disadvantaged groups face in advancing in society. Reservation is one of the measures that is employed to overcome these barriers****. The individual difference may be a result of privilege, fortune, or circumstances but it cannot be used to negate the role of reservation in remedying the structural disadvantage that certain groups suffer.*

31. The crux of the above discussion is that the binary of merit and reservation has now become superfluous once this Court has recognized the principle of substantive equality as the mandate of Article 14 and as a facet of Articles 15(1) and 16(1)*. An open competitive exam may ensure formal equality where everyone has an equal opportunity to participate.* ***However, widespread inequalities in the availability of and access to educational facilities will result in the deprivation of certain classes of people who would be unable to effectively compete in such a system****.* ***Special provisions (like reservation)***



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enable such disadvantaged classes to overcome the barriers they face in effectively competing with forward classes and thus ensuring substantive equality. The privileges that accrue to forward classes are not limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive examination but also includes their social networks and cultural capital (communication skills, accent, books or academic accomplishments) that they inherit from their family. The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in open examination. *They have to put in surplus effort to compete with their peers from the forward communities. On the other hand, social networks (based on community linkages) become useful when individuals seek guidance and advise on how to prepare for examination and advance in their career even if their immediate family does not have the necessary exposure.* ***Thus, a combination of family habitus, community linkages and inherited skills work to the advantage of individuals belonging to certain classes, which is then classified as "merit"***

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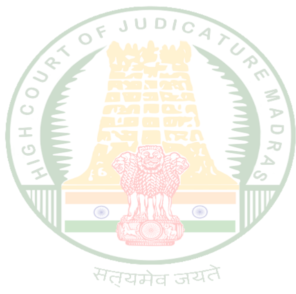
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reproducing and reaffirming social hierarchies. *In BK Pavithra v. Union of India, a two-judge Bench of this Court, of which one of us was a part (Justice DY Chandrachud) had observed how apparently neutral systems of examination perpetuate social inequalities. This Court observed:*

"134. It is well settled that existing inequalities in society can lead to a seemingly "neutral" system discriminating in favour of privileged candidates. As Marc Galanter notes, three broad kinds of resources are necessary to produce the results in competitive exams that qualify as indicators of "merit". These are:

"... (a) economic resources (for prior education, training, materials, freedom from work, etc.); (b) social and cultural resources (networks of contacts, confidence, guidance and advice, information, etc.); and (c) intrinsic ability and hard work..." [Galanter M., Competing Equalities : Law and the Backward Classes in India, (Oxford University Press, New Delhi 1984), cited by Deshpande S., Inclusion versus excellence : Caste and the framing of fair access in Indian higher education, 40 : 1 South African Review of Sociology 127-147.]

135. The first two criteria are evidently not the products of a candidate's own efforts but rather the structural conditions into which they are borne. By the addition of upliftment of SCs and STs in the moral compass of merit in

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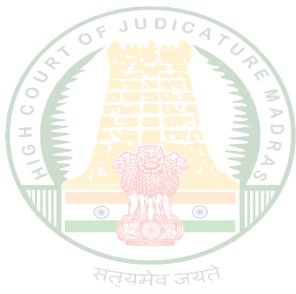
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government appointments and promotions, the Constitution mitigates the risk that the lack of the first two criteria will perpetuate the structural inequalities existing in society."

32. *This is not to say that performance in competitive examination or admission in higher educational institutions does not require a great degree of hard work and dedication but it is necessary to understand that "merit" is not solely of one's own making. The rhetoric surrounding merit obscures the way in which family, schooling, fortune and a gift of talents that the society currently values aids in one's advancement.* ***Thus, the exclusionary standard of merit serves to denigrate the dignity of those who face barriers in their advancement which are not of their own making. But the idea of merit based on "scores in an exam" requires a deeper scrutiny****. While examinations are a necessary and convenient method of distributing educational opportunities, marks may not always be the best gauge of individual merit. Even then marks are often used as a proxy for merit. Individual calibre transcends performance in an examination. Standardized measures such as examination results are not the most accurate assessment of the qualitative difference between candidates. Ashwini Deshpande highlights that there is always a degree of separation between what examinations claim to measure and what they actually measure. He states:*

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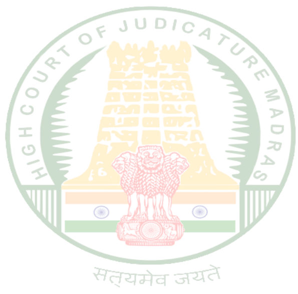
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"...most examinations and tests have an inevitably indexical character - they claim to measure something more than (or other than) what is established by the actual tasks they set. Thus, for example, a candidate aspiring to join civil service may take an entrance exam where she appears in papers in, say geology, philosophy and general knowledge. On the basis of her performance in these papers, the entrance exam claims to predict her potential ability to be a good civil servant. There is at best a rather indirect link between good at writing exam answers in geology, philosophy and general knowledge and being a good civil servant. This is the sense in which the exam and the candidate's performance in it serves as an index - an indicator - of something else namely her potential to be a good civil servant.

All examinations are more of less indexical, even those that have a lot of 'practical' components involving activities that appear to be very close to what successful candidates will eventually be doing professionally. All other things being equal, indexicality tends to weaken diagnostic claims of the examination. Because of this, the higher the stakes, the greater the ideological energy that is spent on building up the prestige and popular deference accorded to the exam. That is why exams guarding the gateway to a prized profession or status are steeped in hyperbole and are socially required (so to speak) to be traumatic bloodbaths. Anything less would

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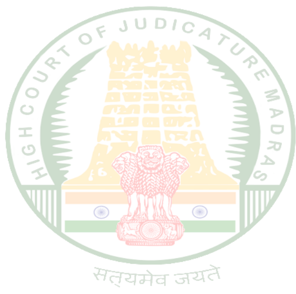
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not only undermine the status of the status that they are guarding, it would also endanger the main social function that such exams perform, which is to persuade the vast majority of aspirants to consent to their exclusion."

33. At the best, an examination can only reflect the current competence of an individual but not the gamut of their potential, capabilities or excellence, which are also shaped by lived experiences, subsequent training and individual character. The meaning of "merit" itself cannot be reduced to marks even if it is a convenient way of distributing educational resources*. When examinations claim to be more than systems of resource allocation, they produce a warped system of ascertaining the worth of individuals as students or professionals. Additionally, since success in examinations results in the ascription of high social status as a "meritorious individual", they often perpetuate and reinforce the existing ascriptive identities of certain communities as "intellectual" and "competent" by rendering invisible the social, cultural and economic advantages that increase the probabilities of success.* ***Thus, we need to reconceptualize the meaning of "merit". For instance, if a high-scoring candidate does not use their talents to perform good actions, it would be difficult to call them "meritorious" merely because they scored high marks. The propriety of actions and dedication to public***

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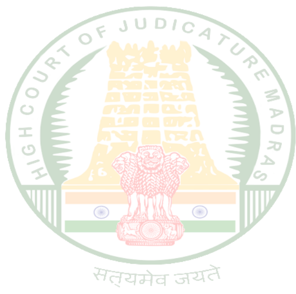

service should also be seen as markers of merit, which cannot be assessed in a competitive examination. Equally, fortitude and resilience required to uplift oneself from conditions of deprivation is reflective of individual calibre*.*

36. *It is important to clarify here that after the decision in NM Thomas (supra) there is no constitutional basis to subscribe to the binary of merit and reservation. If open examinations present equality of opportunity to candidates to compete, reservations ensure that the opportunities are distributed in such a way that backward classes are equally able to benefit from such opportunities which typically evade them because of structural barriers. This is the only manner in which merit can be a democratizing force that equalises inherited disadvantages and privileges. Otherwise claims of individual merit are nothing but tools of obscuring inheritances that underlie achievements.*

*77****.*** *In view of the discussion above we hold that the reservation for OBC candidates in the AIQ seats for UG and PG medical and dental courses is constitutionally valid for the following reasons:*

(i) Articles 15(4) and 15(5) are not an exception to Article 15(1), which itself sets out the principle of substantive equality (including the recognition of existing inequalities). Thus, Articles 15(4) and 15(5) become a restatement of a

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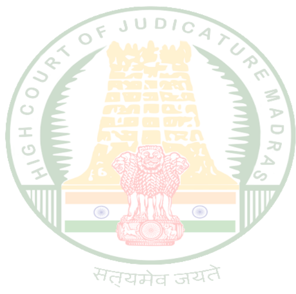
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particular facet of the rule of substantive equality that has been set out in Article 15(1);

(ii) Merit cannot be reduced to narrow definitions of performance in an open competitive examination which only provides formal equality of opportunity. Competitive examinations assess basic current competency to allocate educational resources but are not reflective of excellence, capabilities and potential of an individual which are also shaped by lived experiences, subsequent training and individual character. Crucially, open competitive examinations do not reflect the social, economic and cultural advantage that accrues to certain classes and contributes to their success in such examinations;

(iii) High scores in an examination are not a proxy for merit. Merit should be socially contextualized and reconceptualized as an instrument that advances social goods like equality that we as a society value. In such a context, reservation is not at odds with merit but furthers its distributive consequences;

(iv) Articles 15(4) and 15(5) employ group identification as a method through which substantive equality can be achieved. This may lead to an incongruity where certain individual members of an identified group that is being given reservation may not be backward or individuals belonging to the non-identified group may share

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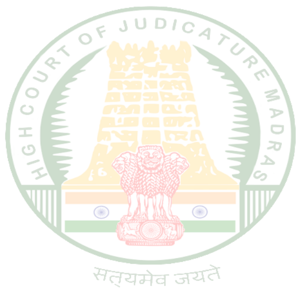
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certain characteristics of backwardness with members of an identified group. The individual difference may be a result of privilege, fortune, or circumstances but it cannot be used to negate the role of reservation in remedying the structural disadvantage that certain groups suffer;

(v) The scheme of AIQ was devised to allot seats in State-run medical and dental institutions in which students from across the country could compete. The observations in Pradeep Jain (supra) that the AIQ seats must be filled by merit, must be read limited to merit vis-à-vis residence reservation. This Court in Pradeep Jain (supra) did not hold that reservation in AIQ seats is impermissible;

(vi) The Union of India filed an application before this Court in Abhay Nath (supra) placing the policy decision of the Government to provide reservation for the SC and ST categories in the AIQ seats since until then in view of the confusion on demarcation of seat matrix, there was no clarity on whether reservations could be provided in the AIQ seats. The Union Government was not required to seek the permission of this Court before providing reservation in AIQ seats. Therefore, providing reservation in the AIQ seats is a policy decision of the Government, which will be subject to the contours of judicial review similar to every reservation policy;

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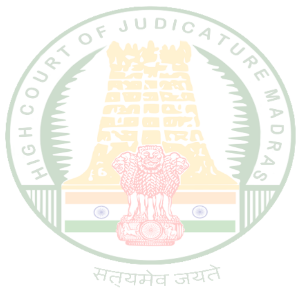
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(vii) It was clarified in Dinesh Kumar (II) (supra) that the total seats demarcated for AIQ shall be determined without excluding reservation as was earlier directed by Pradeep Jain (supra) and clarified in Dinesh Kumar (I). However, this Court in Buddhi Prakash Sharma (supra) had erroneously construed the clarification in Dinesh Kumar (II) to mean that there should be no reservation in AIQ seats. Therefore, the order in Abhay Nath (supra) was only clarificatory in view of the observations in Buddhi Prakash Sharma (supra); and

(viii) Clause 11 of the information bulletin specifies that the reservation applicable to NEET-PG would be notified by the counselling authority before the beginning of the counselling process. Therefore, the candidates while applying for NEET-PG are not provided any information on the distribution of seat matrix. Such information is provided by the counselling authority only before the counselling session is to begin. It thus cannot be argued that the rules of the game were set when the registration for the examination closed."

4.16. He would further submit that even before the present decision in ***Neil Aurelio Nunes and Ors. Vs. Union of India and Ors.***[15], the positive obligation of the State to adopt a standard of proportional equality, taking

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[15] 2022 SCC Online SC 75

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into account differing conditions and circumstances of a class of citizens whenever such conditions stand in the way of equal access to enjoyment of basic rights and claims, was recognised by the Hon'ble Supreme Court of India in ***State of Kerala and Another Vs. N.M.Thomas and Ors***[16], in paragraph Nos.25 to 28 which are extracted hereunder:-

> *"**25.** The crux of the matter is whether Rule 13-AA and the two orders Exts. P-2 and P-6 are unconstitutional violating Article 16(1). Article 16(1) speaks of equality of opportunity in matters relating to employment or appointment under the State. The impeached rule and orders relate to promotion from lower division clerks to upper division clerks. Promotion depends upon passing the test within two years in all cases and exemption is granted to members of Scheduled Castes and scheduled tribes for a longer period namely, four years. If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly*

[16] (1976) 2 SCC 310

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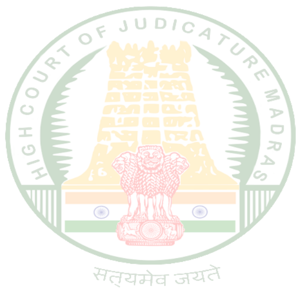
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circumstanced in regard to their entry into employment, such classification can be justified. Classification between direct recruits and promotees for purposes of promotion has been held to be reasonable in C.A. Rajendran v. Union of India [AIR 1968 SC 507 : (1968) 1 SCR 721 : (1968) 2 LLJ 407]

26. *The respondent contended that apart from Article 16(4) members of Scheduled Castes and scheduled tribes were not entitled to any favoured treatment in regard to promotion. In T. Devadasan v. Union of India [AIR 1964 SC 179 : (1964) 4 SCR 680 : (1965) 2 LLJ 560] reservation was made for Backward Classes. The number of reserved seats which were not filled up was carried forward to the subsequent year. On the basis of "carry forward" principle it was found that such reserved seats might destroy equality. To illustrate, if 18 seats were reserved and for two successive years the reserved seats were not filled and in the third year there were 100 vacancies the result would be that 54 reserved seats would be occupied out of 100 vacancies. This would destroy equality. On that ground "carry forward" principle was not sustained in Devadasans case [AIR 1964 SC 179 : (1964) 4 SCR 680 : (1965) 2 LLJ 560] . The same view was taken in the case of M.R. Balaji v. State of Mysore [AIR 1963 SC 649 : 1963 Supp (1) SCR 439] . It was said that not more than 50 per cent should be reserved for Backward*

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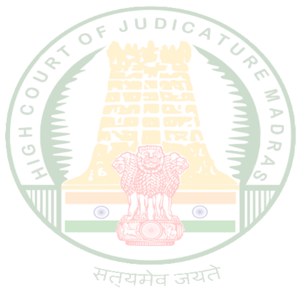
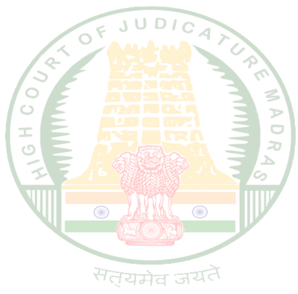


Classes. This ensures equality. Reservation is not a constitutional compulsion but is discretionary according to the ruling of this Court in Rajendran case [AIR 1968 SC 507 : (1968) 1 SCR 721 : (1968) 2 LLJ 407] .

27. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection (State of Mysore v. V.P. Narasing Rao [AIR 1968 SC 349 : (1968) 1 SCR 407 : (1968) 2 LLJ 120]).

***28. This equality of opportunity need not be confused with absolute equality**. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and*



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(2).”

4.17. He would therefore submit that recognising structural barriers faced by a class of Students in fact is in furtherance of Article 14 and Article 15(1) of the Constitution of India and therefore the only consideration is whether the classification is reasonable, based on intelligible differentia and has nexus to the object of reservation.

4.18. He would submit that the present classification is based on *intelligible differentia* and has a rational relation to the object sought to be achieved. He would submit that the classification under the Act is based on the cognitive gap among the other students and the students of Government Schools which *perse* requires an upliftment by provision of an equal opportunity. The report of Hon'ble Mr.Justice P.Kalaiyarasan, Retired Judge of Madras High Court demonstrates that the classification is based on the intelligible differentia as the handicaps faced by the Government School students show that there is nexus between the object sought to be achieved

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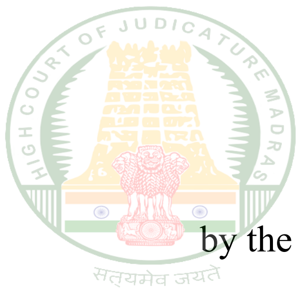
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by the Act.

4.19. He would particularly rely on the following findings:

(a) Paragraph No.5.1 of the report that there is a significant gap in cognitive development between the students from affluent and less affluent backgrounds. The paragraph No.5.1 is extracted hereunder:-

> *"**5.1. A Significant Gap in Child's Cognitive Development - Affluent vs. Less Fortunate***
>
> *The consensus from various studies is that there is a sizable gap in children's cognitive capabilities among the affluent and the less fortunate socio-economic groups. This gap in the cognitive capability does not diminish and in many cases it is found to increase over the child's school life.*
>
> *The following example demonstrates the seriousness of cognitive ability gap. In the UK, on average, five-year-olds from richer households are already 15 months ahead of those from poorer households in vocabulary development. This gap is found to increase with school years, putting the child from the underprivileged background at a significant disadvantage.*
>
> *A nationwide study in India reported that children from the lower end of the socioeconomic spectrum performed worse than the privileged*

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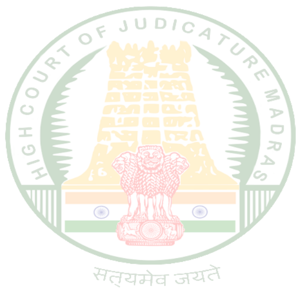

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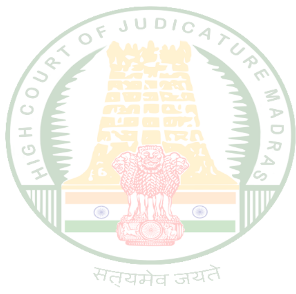
students in their first standard. This learning gap increased further over the school years. A similar case was also observed in Tamil Nadu.

A child from a backward socio-economic spectrum even in his/her first standard is already behind a child from a fortunate background in his/her cognitive capability. This gap is found to increase with the child's age. The time, at which a less fortunate child appears for NEET, years of disparity gets added up and puts him/her at a severe disadvantage. Assessing the two groups with the same yard-stick is illogical and unjust; such assessments would amount to treating unequals as equals."

(b) Paragraph Nos.5.2 and 5.5 that studies show that the students in Government Schools are disadvantaged in terms of caste, wealth, parental occupation, parental education and gender. The paragraph Nos.5.2 and 5.5 are extracted hereunder:-

"5.2. The Disadvantaged Children study at Government Schools

It is evident from numerous studies that socio-economically disadvantaged students go to the Government Schools. Socio-economic factors which are found to be a significant predictor of school types are - caste, wealth, parental occupation, parental education, gender. Out of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these factors, caste is found to be the strongest predictor among the group followed by economic factors.

Caste

In a study conducted in Rajasthan among a sample of young women who were first generation college-goers, a higher proportion of the SC and ST women in the sample were enrolled in Government schools compared to other caste groups. This has been reported in other studies as well. In Andhra Pradesh and Telangana children from higher caste were more likely to enrol in a private school. Data and research clearly establish the fact that a sizeable proportion of children from socially backward caste groups go to Government schools.

Wealth

The wealth factor can be determined by the characteristics of the household such as household income, type of facilities in the house (the type of house, owning a phone, Television) and landholdings. It can be observed that children from low household income, poor facilities and landholdings below the median level study in Government schools.

Parental Occupation

A child whose father is an agricultural or casual labourer is most likely to go to a Government school. More of the children with fathers who worked as salaried employees (economically secure position) went to private schools. This trend was also consistent with

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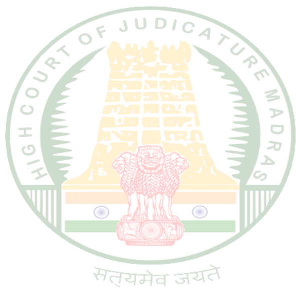
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profession of the mothers.

Parental Education

Prior studies and data can establish that a higher proportion of children whose parents are uneducated join Government schools. Mother's education is found to be more important than the father's education in influencing a child's learning capability. Mothers from a poor socio-economic background are most likely to have no or little education and this is found to affect the child's learning capabilities.

Gender

The societal tendency to provide better educational opportunities for boys over girls is still a prevalent social issue. Thus boys are provided facilities that are perceived as better, This can be clearly observed in the gender gap in a private school over a Government school.

Each of the above-discussed factors creates a barrier to the aspirations of a child. In reality, all these factors are intertwined and put the child in a disadvantageous position to take on a competitive exam like NEET. Government Schools are the aggregators of this disadvantaged group.

5.5. Economic Challenges of Government School Children

Though the Government schemes ease the economic burden in schooling, even smaller costs associated with studying becomes hard for the family to bear. Counter-intuitively, a large portion of students who attended Government schools (in

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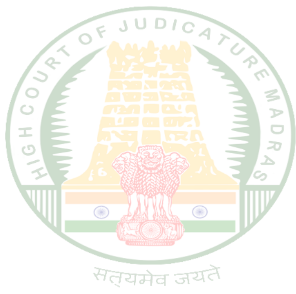
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a survey) reported that their families had fallen into debt to support their education. ***This reinforces the fact that Government school students even after all the support from the government still find themselves staring at an economical barrier."***

(c) Paragraph Nos.5.3 and 7.4.3 of the report that about 98% of the students, who got admission in M.B.B.S., course avail coaching facilities and only about 100 candidates could get admission without any coaching. The lack of access to coaching classes and other resources creates social and psychological barrier in the students of the Government Schools. Further, most of the successful students were repeating attempters of NEET. The said paragraphs are extracted hereunder:-

"5.3. Social and Psychological Barrier of the Government School students
Most socio-economically backward families have deep-seated social and psychological barriers to even apply for NEET and to enrol in a medical college. For example in a study, it was found that low-income high achievers are less likely to apply to more selective/elite college than their higher-income counterparts despite the fact that selective institutions typically cost them less.[6]

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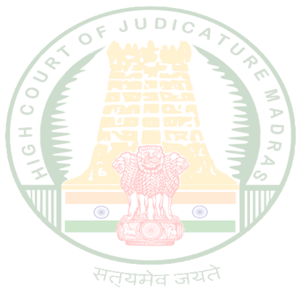
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Misinformation about their admission chances, social and psychological barrier of competing and studying with a privileged group could stop them from appearing for NEET exam. Even if they appear for the NEET exam, mentally they are not confident about their chances of passing the exam. This is a very serious issue faced by Government school Students when they compete with private school students who can afford expensive NEET exam coaching."

7.4.3. Advantages of the Private School Students

The Private school students adopt two strategies to score good marks in NEET ~ 1. Enrol themselves to specialised NEET coaching institutes 2. If not successful in the first year, spend another year with just a single focus of clearing NEET and repeat the exam.

a. Coaching Centre

Prior to the introduction of NEET in Tamil Nadu, the admissions to the MBBS course was based OF the marks scored by the candidates in their board exams. There was no separate common entrance test and the need for separate coaching did not arise outside the school timings or boundaries.

In all the common entrance test systems including NEET, the methodology of the test, pattern of the test, nature of the questions asked, assessment and evaluation mechanism widely differ from the Board examination systems even if the syllabus are same. For this type of entrance

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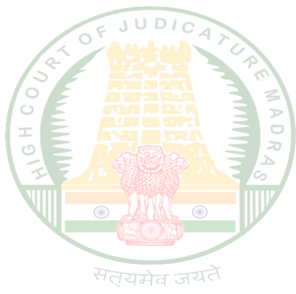
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tests, specialised coaching plays a pivotal role in the success of the candidates.

This fact is corroborated from the MBBS admission data for the current academic year. About 98% of candidates secured MBBS seat by availing coaching facilities. Only 100 candidates secured MBBS seat without joining any coaching centre. It shows the importance of coaching centre's role in a candidate's chances of getting MBBS admission. Even the private school students from the CBSE stream which is popularly perceived to be of a higher quality need trainers to help them learn how to pass NEET. The data pointing out that almost all successful candidates had to take extra coaching emphasises the fact that school education imparted to them falls short on preparing them for NEET. Private school students make use of third party coaching to improve their odds of NEET success.

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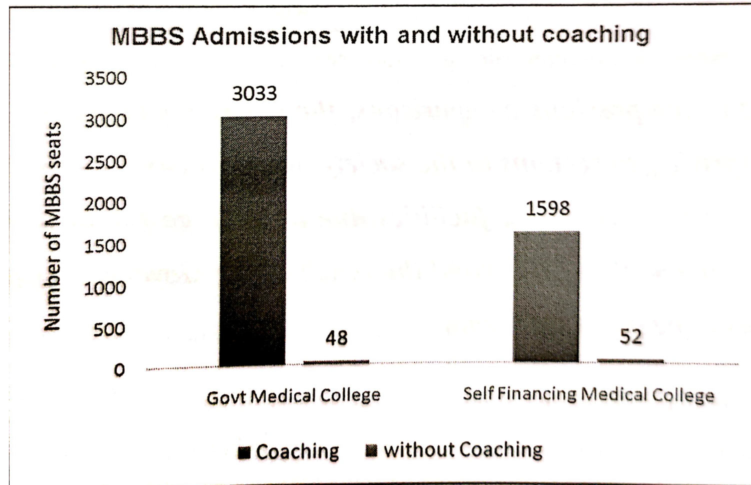

Fig. 7.15 - Number of students who got MBBS admission (incl. Central government. quota and others) with respect to coaching

The next question that arises is who all can avail these separate coaching facilities, apart from the regular classes. Availing of these coaching facilities depends on the availability accessibility and affordability by the students, whether they are from Government schools or Private schools. The availability / accessibility of these coaching facilities, almost all of them are, Concentrated in Urban areas - Chennai, Coimbatore, Trichy, Madurai and other urban areas. Even in urban areas, the number of these facilities tapers off sharply from the most urbanised place to less urbanised place, but the geographical spread of the schools is not in the fashion of coaching centres. ***More so in the case of the Government schools, which are very much uniformly distributed across the State to fulfil its fundamental social objective of providing***

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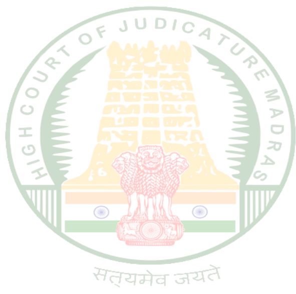
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universal schooling facilities, similar coaching facilities in the rural areas are improbable. Candidates have to shift to urban areas or join residential centres in order to avail of extra coaching classes*.*

Apart from availability of the coaching facility, its affordability is a major concern. Fora Short term coaching of 40 days, these specialised institutes charge on an average of about Rs.30,000 and for a long term coaching it costs about Rs.1,00,000 on an average, which only the students from affluent families can avail. So, it is skewed in favour of the private school students who are in better socio-economic position compared to disadvantageous students. ***As highlighted in the previous comparisons, the Government school students come from underprivileged sections of the society, whose income levels does not permit any kind of private coaching facilities due to its huge financial burden on the family. Private coaching is beyond the reach of the Government school students and remains to be a distant dream****.*

It is to be understood that similar kind of access of coaching and other facilities by the Private school students since childhood, they are always in better advantageous position, whereas Government school students' continuous deprivation from the childhood adds to the cognitive gap between them and Private school students.

b. Repeaters

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An important feature of the present system of admission to MBBS through NEET is that in the present model a student who is unable to get admission in a year or to improve one's rank, an spend additional year or years to take NEET again.

As per the 2019-2020 MBBS admission data (Fig. 7.16), out of 4731 candidates (including central Government quota), 3103(66%) candidates got MBBS seat in two or more attempts. Only about 34% of candidates got admission in the first attempt.

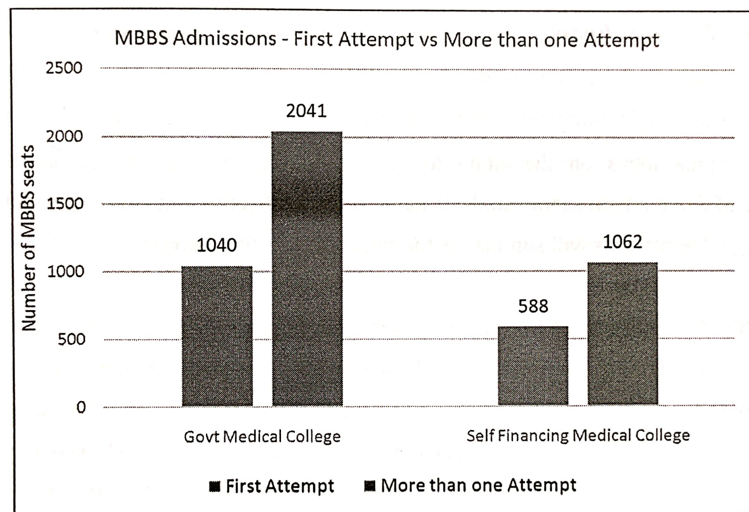

Fig. 7.16 - Number of students who got MBBS admission in first attempt and in more than one attempt in Government Medical College and Self-Financing Medical College

Most of the children in Government schools cannot afford to dedicate extra years of their life for NEET coaching. The socio-economic status of their family does not give

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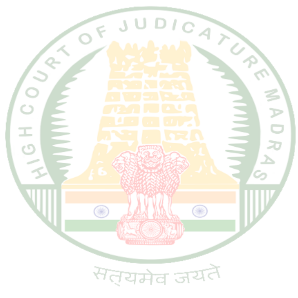
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them the luxury of undergoing coaching. Instead, they go for some other courses to become breadwinners of their family.

These observations point out that there are varying levels of the gap in all school types in What is taught in school and what is needed to score well in NEET. The Private school students face a relatively smaller gap to bridge and also have the economic means to afford extra training to prepare them for NEET. The social angle also plays a crucial role, students from a bet social category tend to have peers who create a surrounding to motivate and help them overcome, the psychological barrier of facing NEET. The Government has taken various measures to equip Government school students to have better success rates but the efforts seem to have paid little results so far. The efforts by the Government to improve the syllabus and providing extra coaching for NEET have helped but that alone is not sufficient. ***This re-emphasises the fact, that Government school students face socio-economic barriers that are beyond the bounds of their schools.***

(d) Relying upon paragraph No.7.3.1.1 of the report, he would submit that only a handful of Government School students (only 6) were able to get admission in the M.B.B.S., courses in the year 2019-2020. The said

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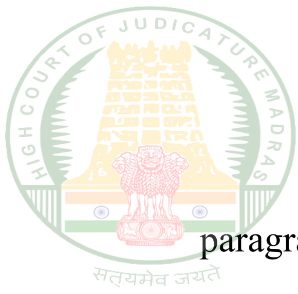
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paragraph is extracted hereunder:-

"7.3. Analysis
7.3.1 To-Down Analysis

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7.3.1.1 MBBS Admissions

Looking at the admission numbers to MBBS in the State and student performance in NEET will give us a top-down view on how students from different school types perform.

Table 7.1: Number of Students allotted MBBS course in Tamil Nadu

	2019-20	*2019-18*	*2017-18*	*2017-16*	*2016-15*	*2015-14*
Government	*6*	*5*	*3*	*34*	*36*	*38*

(e) Relying upon paragraph Nos.7.3.1.4, he would submit that the analogical study further finds that the course of the students vary according to school type, background, parental income, medium of instruction and gender. The said paragraph is extracted hereunder:-

"7.3.1.4. Background of NEET eligible Govt. and Aided School candidates

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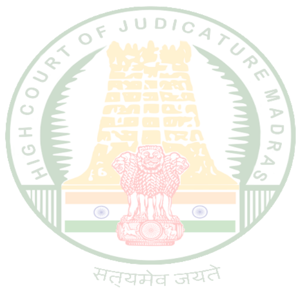
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NEET eligible candidates' data provide information on what contributes to their success over the rest. The coaching centres run by the Tamil Nadu Government collected detailed data of the Government and Aided school students who cleared NEET in the last batch. The detailed data was available only on the Government and Aided school students. This was taken as a starting point for the top-down analysis to answer the question of what leads to cognitive gap among the Government school students. From the data collected by the coaching centres run by the Tamil Nadu Government, it was found only 1,157 Government school students and 1,426 Aided school students cleared the NEET eligibility mark for that year. The background of the 2,583 candidates from the Government and Aided schools were analysed with the available information such as their school type, social background, parental income, the medium of education, gender.

a. School Type

The previous section shows that school type to be an indicator of the performance of the students. Even between the Government school and Aided school students, it is found Aided school students perform better than the Government school students. Out of the 2,583 eligible students, Government school students made up to only 1,157.

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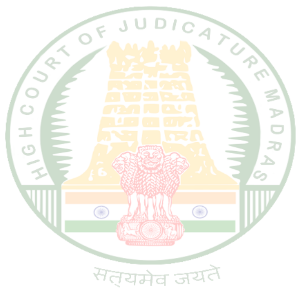
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	<200	200 to 300	300 to 400	>400	Total
Government Schools	1107	48	2	0	1157
Aided Schools	1272	129	22	3	1426
% Difference	15%	169%	1000%	-	23%

Table 7.2: Distribution of eligible students by NEET marks in Tamil Nadu 2018-19

Aided school students outperform Government school students; they do even better than the Government school students when it comes to scoring higher marks. No Government school student scored more than 400 marks. In the 300-400 marks bracket, the Aided school had 1000% more students than Government school students. Even in the 200-300 marks segment Aided school students make up 169% o more and in less than 200 marks they are more by 15%.

Hence it is important to note that just equating the Government and Aided school students is not appropriate. Government school students are at a higher disadvantage than Aided school students which is evident from the NEET marks of these students.

b.Social Background

The strongest indicator of the educational performance of students has been their social category according to various studies conducted in Indian schools as referred in the previous chapter. In Table 7.3, the number of students by social category in each school type is tabulated with a benchmark value. The percentage

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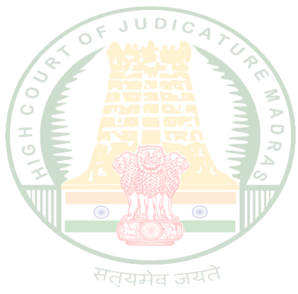

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representation of each social category students from that school type across Tamil Nadu has been taken as the benchmark value. For example, Government school comprises about 1% FC, 23% BC, 4% BC(M), 37% MBC & DNC, 26% SC, 6% SC(A) & 3% ST. These benchmark values provide a guiding value on what should have been the admission numbers if there were no inequalities among the various social categories.

Table 7.3 shows that within Government and Aided schools, students performance is strongly tied to their social background. The FC students are less than 2% in these schools, making the BC category the predominant social class. Though the BC students from Government ind Aided schools account only for 23% & 37% in the benchmark value they made up to 48% ind 58% of the total NEET eligible candidates. A similar trend can be observed in both school types across the social categories as well. BC students perform better than MBC, MBC better than SC and so on. The most disadvantaged group - ST has very low representation.

A comparison of Government school and Aided school students with a social lens illuminates certain hidden trends. Forward category and Backward category students from Aided Schools are in more numbers than their Government school counterparts. The trend reverses with more backward social categories such as MBC, SC & SC(A). Government school students are more from the more backward social

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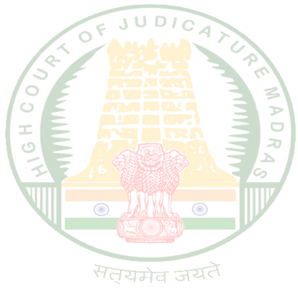
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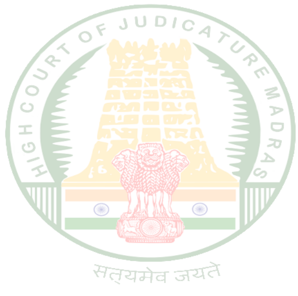
categories than the students from aided schools.

Table 7. 3: NEET eligible Govt. & Aided school students by social category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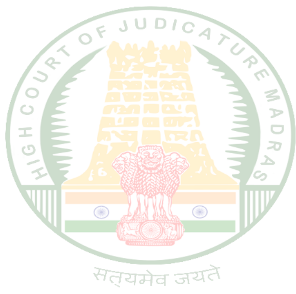
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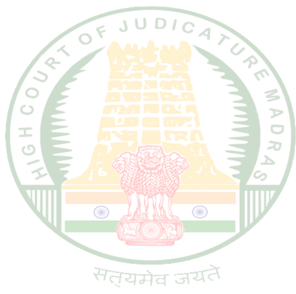
	Government Schools			Aided Schools		
	No. of students	Percentage	Bench mark %	No. of students	Percentage	Benchmark %
FC	1	0.1%	1%	30	2%	2%
BC	526	48%	23%	824	58%	37%
BCM	30	3%	4%	66	5%	8%
MBC & DNC	336	30%	37%	264	19%	25%
SC	242	22%	26%	230	16%	23%
SCA	17	2%	6%	7	0.5%	4%
ST	5	0.5%	3%	5	0.4%	1%

Further NEET marks in Table 7.4 add to the evidence that students from better social background relatively perform better than their disadvantaged peers. ***Comparing the students from each social category among the two school types, Aided school students score higher marks than Government school students in each social category****. For instance, BC students from aided schools have 19 students who scored more than 300 marks whereas in Government school it is just 2. In case of SC category, 16 students from aided schools have scored more than 200, in the Government schools, it is only 10. Government school MBC & DNC students made up less than half the count of Aided schools counterparts among the 200+ mark scoring students. Treating Government and Aided school students as equals will lead to the really disadvantaged Government school students losing their reserved seats to*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relatively more advantaged aided school students from their own social category.

Table 7.4: NEET eligible Govt. & Aided school students categorised by marks in NEET & social category

	Government School				Aided School			
	<200	200 to 300	300 to 400	>400	<200	200 to 300	300 to 400	>400
FC	0	1	0	0	22	7	1	0
BC	503	21	2	0	726	79	17	2
BC M	26	4	0	0	63	3	0	0
MBC & DNC	324	12	0	0	235	27	2	0
SC	232	10	0	0	214	13	2	1
SC A	17	0	0	0	7	0	0	0
ST	5	0	0	0	5	0	0	0
Total	1107	48	2	0	1272	129	22	3

Data corroborates with the studies referred in the previous chapter, they show that social categories have an influence on student's learning capability as seen in their marks. ***It is an interesting observation to note that even among the same social category Aided school students perform better than the Government school students in numbers and as well in scoring higher marks****. The disadvantaged still face a social barrier that is difficult to surmount.*

c. Parental Income

The exact parental income data of these specific 2,583 students was not available. Since the average parental income of the 12th standard students of the 2018-19 batch was available, it can be used as an indicator of the eligible students' parental income levels.

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Table 7.5 shows that Government school students have parents with the least income. Parents from CBSE & ICSE schools earn 900% o more than the Government school parents. In the case of matriculation parents, the difference is over 220% and 165% with Unaided school parents. Among the Government and Aided school parents, there is a difference of 44%.

Table 7.5: Average parental income of 2018-19 12th standard batch

	Avg. Parental Income
Government	Rs. 46,686
Aided	Rs. 67,102
Unaided	Rs.1,23,807
Matric	Rs. 1,50,526
CBSE	Rs. 4,69,413
ICSE	Rs. 4,77,263

The findings from the previous two factors - school type & social category combined with the data shown in Table 7.5 ***it can be inferred that the economically backward students are also socially backward and go to Government schools. Their education performance is also found to be lower than the rest. This adds to the evidence that students from a lower socio-***

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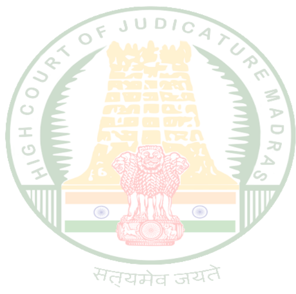
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economic background are at a disadvantage while facing competitive exams like NEET. In this case, Government schools happen to be the only asylum where these socio-economically backward students could pursue their studies.

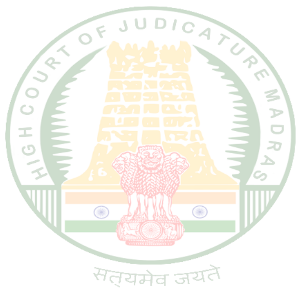
d. Medium of Instruction

Government & Aided schools are almost the only school types which provide education in Tamil Medium. As seen in Table 7.6, 78% & 36% of the NEET eligible students from Government and Aided schools are educated in Tamil medium. A crucial distinction between Government school students and Aided school students arises from this data. Though 77% of Aided school students follow Tamil medium only 36% of the eligible candidates were from Tamil medium. A minority English medium student outperformed the majority Tamil medium students in Aided schools.

Table 7.6: NEET eligible Govt. & Aided school students categorised by the medium of instruction

	Government Schools		Aided Schools	
	Tamil	English	Tamil	English
Number of students	900	257	514	912
Percentage	78%	22%	36%	64%

Though the NEET question paper is made available in Tamil, the amount of preparation material & resources is much lower in Tamil in comparison with available material in English.



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This also happens to be a factor that put the Tamil medium students at a disadvantage.

e. Gender

Girls are found to outperform boys in both Government and Aided schools. About two-thirds of the students eligible for NEET are girls, Government schools have more NEET eligible girl students than the Aided schools.

Table 7.7: NEET eligible Govt. & Aided school students categorised by gender

Government Schools				Aided Schools			
Number of Boys	Number of Girls	Sex Ratio – No. of boys per 100 girls		Number of Boys	Number of Girls	Sex Ratio – No. of boys per 100 girls	
		Boys	Girls			Boys	Girls
363	794	46	100	457	969	47	100

From the top-down analysis conducted on 2019-20 MBBS admission student batch, it can be concluded that the performance of Government school students is thrusted by various external factors which are beyond their control. It can be observed that school type is more of ***an aggregator of students of a certain socio-economic, gender & medium of education cluster****. Government schools are found to represent the disadvantaged students more than the other schools and their academic performance reflects that. These students are stuck in a vicious cycle which makes upward mobility almost impossible and their only chance of success is giving them a boost to have an equal*

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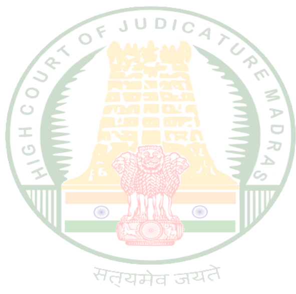
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competing ground."

(f) From Paragraph Nos.7.3.1.4 and 7.3.3 of the report, he would submit that Government School students have parents with least income and parents from I.C.S.E and C.B.S.E Schools earn 900% more than the Government School parents. Most parents are daily wage labourers (83% of the fathers and 65% of the mothers).

(g) Further placing reliance on paragraph No.7.4.1, he would submit that 85% of the Schools in the State of Tamil Nadu are located in the rural areas and of the same, 73% are Government Schools, which is extracted hereunder:-

> ***"7.4.1 Location of Schools — Rural areas and Government Schools***
>
> *The very location of the school is also a major factor which influences the facilities available to the students studying in Government schools. Most of the Government schools at all levels i.e. Primary, Middle, High and Higher Secondary Schools invariably are located in rural areas when compared to the other Management*

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Schools (Fig.7.14.b). ***About 85% of state Government schools are located in rural areas. These government schools account to 73°o of the total schools in the rural area of the state.***

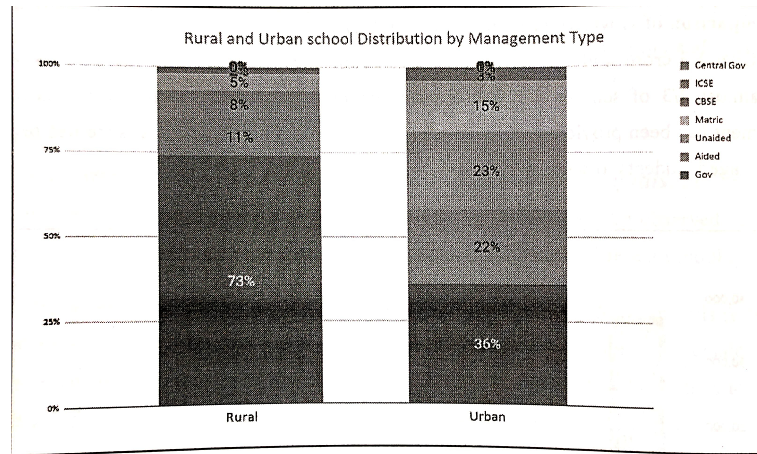
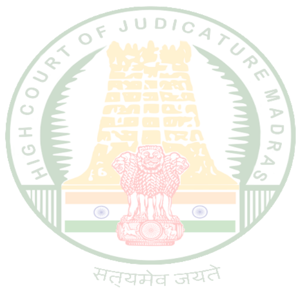


Fig. 7.14. Rural - Urban distribution of schools by management type

Similarly, the geographical distribution of the Higher Secondary schools in Tamil Nadu in rural and urban areas was also examined. Table 7.9 depicts the percentage of distribution of High and Higher Secondary Schools in Village and Town Panchayats, Municipalities Corporations and other Cantonment areas. It is obvious that most of the Government schools are located in village areas, whereas Aided, Matriculation, CBSE and ICSE schools are located in urban areas.

Table 7.9 - Table showing the distribution of High and Higher Secondary schools by Management in Village & Town Panchayats, Municipalities,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Corporations, other areas in Tamil Nadu

School Management	Village Panchayat	Town Panchayat	Municipality	Corporation	Township/Canton ment/ Others
State Government	76.9%	10.8%	6.2%	5.1%	0.87%
Aided	36.2%	16.1%	22.2%	23.7%	1.7%
Central Government	52.1%	6.2%	18.7%	22.9%	0.00%
Matriculation	42.8%	15.7%	17.9%	19.0%	4.6%
CBSE	54.4%	9.4%	12.7%	17.1%	6.4%
ICSE	40.9%	13.6%	10.9%	29.1%	5.4%
Un-Aided	67.2%	8.6%	10.9%	8.9%	4.3%
Grand Total	58.9%	12.8%	12.6%	12.9%	2.7%

About 46% of CBSE schools are located in four districts - Chennai, Kancheepuram, Tiruvallur and Coimbatore, whereas only 13% Government schools are located in these districts, Every year, the State Government invests its resources in school education. It means the State Government is majorly catering to the schooling of children in the rural areas, whereas other schools mostly are catering to children from urban students. Every level of school, whether it is primary OF middle or high or higher secondary, the spatial distribution of State Government schools is more in rural areas than in urban areas. State Government usually set up Higher Secondary schools covering 7 Km radius across the State and even in some cases where the Government Higher Secondary schools are located at a little longer distance, free hostel facilities are provided, ***It is well known that the students who are studying in rural areas have a relative disadvantage in showing***

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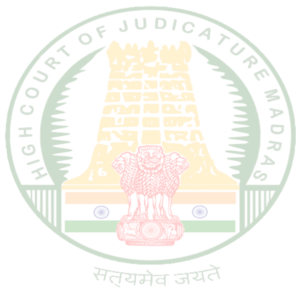
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> ***performance in competitive exam mainly due to higher poverty levels compared to urban areas, non-availability of coaching facilities, even if affordable. As the Government schools are the ones mainly catering to the rural areas, these students face the disadvantage in competitive exams.***
>
> *Popular public opinion is that private schools are better than Government schools. Comparing Private schools with Government schools is not fair as it is like comparing apples and oranges, as the sheer size of state-wide school infrastructure set up by the Government is 285% more than all Private schools combined. Peer-reviewed studies have pointed out that there are outstanding schools in both Government and Private schools and as well as bad schools in both. Instead of getting into the aspect of measuring the relative quality of each of the schools, it is productive to look at the measures taken by the Government and advantages of Private school Students with respect to NEET performance.*"

4.20. Taking this Court through the summary given in the commission's report at page Nos.57 and 58 of the report, the learned Senior Counsel would submit that all this would cumulatively demonstrate the structural barrier which forms the basis to be classified as socially and

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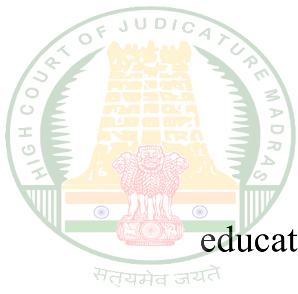

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educationally Backward Class as held by the Hon'ble Supreme Court of India in ***Neil Aurelio Nunes and Ors. Vs. Union of India and Ors.***[17] and submitted that thus, the affirmative action and positive discrimination is very much within the constitutional goals as contained in Article 14 and Article 15 of the Constitution of India. The summary is extracted hereunder:-

S.No.	Factor	Advantages of Private School Student	Disadvantages of Government School Student
1	Social category	NEET scores of Private school students are higher in each social category. They rank higher in their social category's rank list.	NEET scores of Government school students are lower than the Private school students in each social category. Government school students end up in bottom of their social category's rank list.
2	Parental income	Parents earn more than Rs.1,00,000/- per year	Parents earn less than Rs.42,000/- per year.
3	Father's Profession & Education	Has a secured job in the Private or Government sector. Has educational qualification and can guide the child in	Depends on unstable daily-wages jobs. Lack of educational qualification and cannot help the child in education.

[17] 2022 SCC Online SC 75

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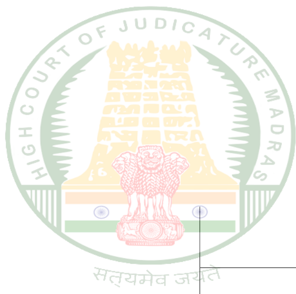
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		education.	
4	Mother's profession & Education	Homemaker or working with a degree. Teaches the child at home and procures right resources for NEET preparation.	Daily-wages labourer or homemaker with no degree. Doesn't have the knowledge to teach the child and is ignorant of NEET.
5	Living standards	Have no obligations except for studying	Need to be involved in part-time work to support the family and get less time to study.
6	Psychological factors	Part of a classroom where students aspire to be doctor, collector, software engineer and so.	Part of classroom where students talk about difficulty in daily life.
7	Gender	Boy child – Family spends more on his education.	Girl child – Family tries to reduce spending on educational
8	Medium of Instruction	English Medium – Can access internet and look for NEET materials	Tamil Medium – Relatively lesser resources
9	School Location	From a town or city. Even in village have access to facilities	From a village, very less facilities.
10	Private coaching	Signs up for NEET training in the 11th standard, spends about Rs.1,00,000/- on NEET coaching.	Cannot afford any private coaching.

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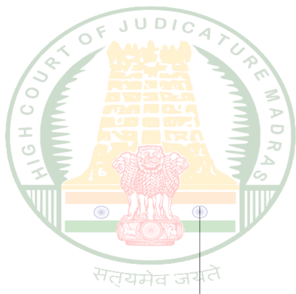
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11	Repeaters	Have the luxury, psychological & economical support to spend more than 1 year in preparing for NEET exam.	Most of them have only one chance of taking NEET and cannot afford to spend a year or more for just NEET preparation due to to the economic situation of the family.

4.21. The learned Senior Counsel sought to distinguish the judgment relied upon by the learned Senior Counsel appearing on behalf of the petitioners. He would submit that the judgment in ***State of A.P. Vs. U.S.V Balram, etc.***[18], was merely a distinction between H.S.C and P.U.C candidates and as it was not a reservation under Article 15(4) of the Constitution of India and therefore, it is not comparable to the present case. Further, he would submit that similarly in ***Suneel Jatley and Ors. Vs. State of Haryana and Ors.***[19], the Court noted the facts that the students who were studied upto class-VIII in rural schools can also study in urban schools for four years before taking medical examination and therefore, held that there is no

[18] (1972) 1 SCC 660

[19] (1984) 4 SCC 296

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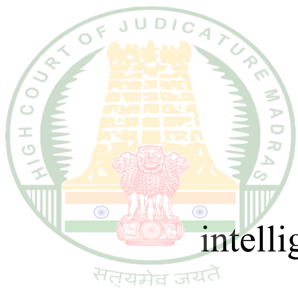
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intelligeble differentia in the classification whereas in the present enactment, the students have to study from class-VI right upto class-XII. Therefore, the learned Senior Counsel would submit that the impugned legislation does not suffer from any illegality.

4.22. Countering the arguments as to the increase in reservation, by relying upon paragraph No.21.5 of the judgment of the Hon'ble Supreme Court of India in ***Saurav Yadav and Ors. Vs. State Of Uttar Pradesh and Ors.***[20], the learned Senior Counsel would submit that the Hon'ble Supreme Court of India categorically held that horizontal reservation will not have the effect of increasing the percentage of reservation and prayed that the Writ Petitions are to be dismissed.

4.23. *Mr.R.Shanmughasundaram*, the learned Advocate General also appearing for the State of Tamil Nadu clarified that the contention that already the socially and educationally Backward Class is given reservation

[20] (2021) 4 SCC 542

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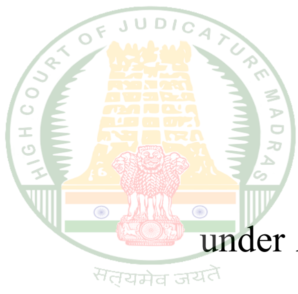
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under Article 15(4) on the basis of their caste as S.C, S.T, Backward Class and Most Backward Class, is without any substance because the reservation is only horizontal in nature and the same is implemented even among the Open General Quota.

4.24. Further, he would submit that the reservation being in excess of 50% i.e., 69% is concerned, the legislation of the State providing for 69%, is placed as Entry No.257A of Schedule-IX to the Constitution of India and therefore is protected. Further, the judgment in ***Indra Sawhney***[21], itself has clearly provided for extension reservation beyond 50% considering the demographic nature of State of Tamil Nadu as majority of the population belonging to social and economical backward classes and this question is already referred to the larger bench and is pending before the Hon'ble Supreme Court of India and pending decision of the larger bench, 69% reservation is being continuously implemented in the State of Tamil Nadu and therefore, he would submit that the contention of the learned Senior

[21] 1992 Supp (3) SCC 217

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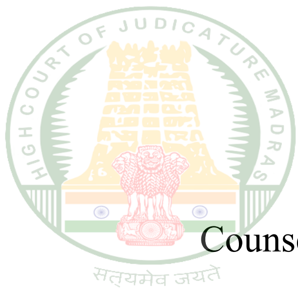

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Counsel, in this regard, cannot be countenanced by this Court. He would further clarify that the State is yet to implement quota for Economically Weaker Sections as the challenge to the Constitution Amendment is pending before the Hon'ble Supreme Court of India.

4.25. *Mr.P.Wilson*, learned Senior Counsel appearing for the School Education Department, while, supporting the submissions made by the learned Senior Counsel, *Mr.Kapil Sibal*, would submit that alternatively, by placing reliance on paragraph No.744 of ***Indra Sawhney***[22], would submit that this is an exceptional case where reservation is also permissible under Article 15(1) of the Constitution of India, taking into account the extraordinary situation arising on account of implementing NEET.

4.26. He would further submit that apart from the social and economically Backward Class reservation, institutional reservation is also permissible at the undergraduate level. He would rely upon the judgment of

[22] 1992 Supp (3) SCC 217

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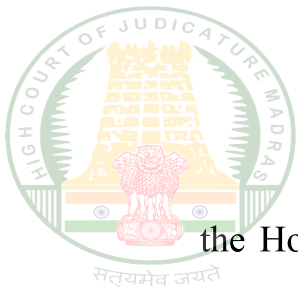
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the Hon'ble Supreme Court of India in ***T.N Medical Officers Association Vs. Union of India and Others***[23]**,** for the said proposition.

4.27. Finally, relying upon the Judgment of this Court, in ***S.Ramakrishnan and Others Vs. State of Tamil Nadu and Others***[24], that already the constitutional validity of the present legislation was upheld by this Court in paragraph Nos.13 to 18 of the said judgment. Thus, he would pray that the reservation is sustainable on these alternative premises also.

4.28. *Mr.Amit Anand Tiwari*, learned Additional Advocate General, appearing on behalf of the Director of Medical Education, even while adopting the arguments of the other Senior Counsel, pointed out to the actual data of admission prior to the introduction of the NEET and subsequent thereto, would demonstrate the extraordinary and alarming exclusion of the Government School students in the matter of admission to the medical

[23] (2021) 6 SCC 568

[24] W.P.(MD) Nos.14403 of 2020 (batch etc), dated 19.08.2021

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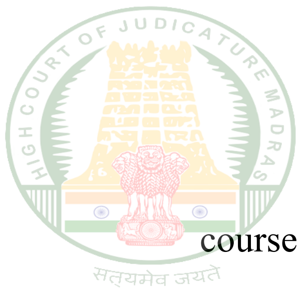

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courses and submit that the same makes out a case as advocated by the Hon'ble Supreme Court of India in ***Neil Aurelio***[25] and would submit that the reasonable nexus to the present classification which is based on a detailed study, has to be accepted.

5.Points for consideration:

5.1 We have given our anxious consideration to the rival submissions made, gone through the material records of the case and considered the various decisions relied upon by both sides. Upon consideration, the following questions arise for determination in the present case:-

> *i. Whether the constitutional challenge to the impugned enactment should be rejected as not maintainable, in view of the earlier pronouncement of this Court?*
>
> *ii. Whether the impugned enactment is to be struck down as violative of the principles of doctrine of legitimate expectation of the students of non-governmental schools preparing for NEET examination?*

[25] 2022 SCC OnLine SC 75

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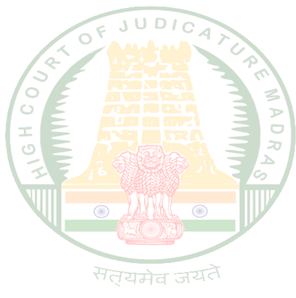

iii. Whether the impugned enactment is ultra vires the constitution for want of legislative competency?

iv. Whether the impugned enactment is liable to be struck down as discriminatory and unreasonable classification and as such violative of Article 14 of the Constitution of India?

v. Whether the reservation in favour of the students of the State Government schools is offensive of Article 15 of the Constitution of India?

6. Question No.i:

6.1. At the outset *Mr. P. Wilson,* the learned Senior Counsel appearing on behalf of the respondents would submit that the Division Bench of this Court in the Judgment, in ***S.Ramakrishnan and Others Vs. The State of Tamil Nadu, and Others***[26]***,*** has already decided that the impugned enactment is constitutionally valid and therefore, the present proceedings are only a second challenge and therefore, not maintainable and the paragraphs Nos.13 to 18 of said Judgment relied upon by the learned counsel is extracted hereunder:-

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[26] W.P.(MD).Nos.14403, 14405 of 2020, dated 19.08.2021

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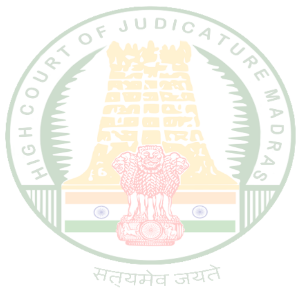
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*"**13.** Though the petitioners have challenged the Government Order as well as the Act as unconstitutional, ultra vires and discriminatory, only based on the recommendations submitted by the Committee, the Bill has been passed by the State legislature and thereafter, it became an Act. It is the policy decision of the Government which has been taken, considering the relevant data and based on the recommendations of the committee headed by Hon'ble Mr.Justice P.Kalaiyarasan. The said policy decision has provided Horizontal reservation as special reservation for Government school students. It is a well settled law that Horizontal reservation is a matter of Government policy and if the State provides for relaxation and concession by considering the relevant materials, it is not open to the Court to review such decision. The Hon'ble Apex Court in the case of **Union of India vs. M.Selvakumar**[27] held that Horizontal reservation is a policy decision and the Court cannot interfere with the same. Therefore, this Court cannot interfere with the policy decision of the Government which has been expressed through the impugned Government Order as well as the impugned Act. In any event, after the Act came into force, the impugned Government Order has become irrelevant.*

***14.** The Committee headed by Hon'ble Mr.Justice P.Kalaiyarasan opined that the*

27 (2017) 3 SCC 504

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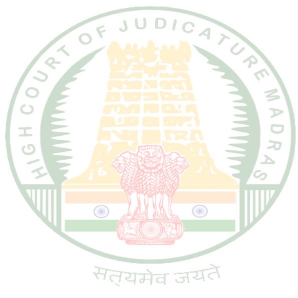
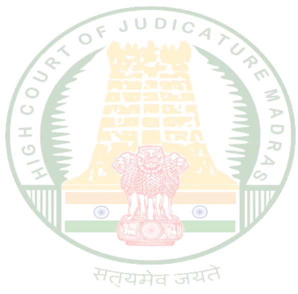


Government school students are placed at a disadvantageous position as compared to their counter parts in private schools due to socio-economic factors such as caste, wealth, parental occupation, parental education, gender and psychological barriers. Further, very expensive and intensive coaching facility is confined to urban areas as well as private school students for which the Government school students who are from socially and economically weaker sections cannot afford. Only to bridge that gap created by the above said factors, the Committee recommended reservation for admission to medical courses on preferential basis to the Government school students. Based on the recommendations of the Committee, the Government came to the conclusion that there is inequality between the Government school students who form a separate category and Private school students and only to remove the inequalities and to provide a level playing field, 7.5% reservation on preferential basis to the Government school students has been rightly given by the Government by way of the impugned Act. Therefore, the attack of the petitioners that the impugned Act violates Article 14 falls to the ground.

15. *Article 14 of the Constitution promotes reasonable classification. A reasonable classification has been made based on the relevant materials provided by the Committee*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headed by Hon'ble Mr.Justice P.Kalaiyarasan. The Government school students form a separate category as they are found to be in a disadvantageous position compared to the Private school students. To remove the inequalities, reservation has been given and therefore, the object of the Act is to remove the inequalities.

***16.** There is always a presumption in favour of the constitutionality of the Act. Unless it is proved that it is irrational, unfair and discriminatory, the assailing of Act that it discriminates Aided school students is not sustainable, as there are no relevant materials or data produced by the petitioners to prove that they are also similarly placed persons as that of the Government school students.*

***17.** There is a nexus which is sought to be achieved by the Act. By providing special reservation, what is sought to be achieved is providing a level playing field to the Government school students with the Private school students. Thus, the provision of reservation to the Government school students cannot be found fault with.*

***18.** Though class legislation is prohibited, reasonable classification is not prohibited. The Government school students forms a separate category as there was inequality between the Government school students and Private school*

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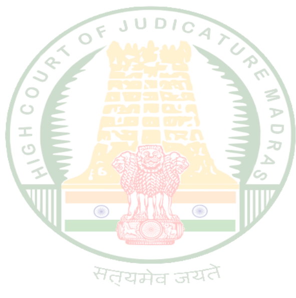
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students and the reasonable classification cannot be found fault with, providing reservation to the Government school students who are in disadvantageous position as an affirmative action on the part of the Government to empower weaker sections of the society and therefore, it is validly justified and the reservation is fair, reasonable and it cannot be termed to be ultra vires."

6.2. It is to be noted that in the above Judgment, the constitutional validity of impugned enactment was not directly under challenge. While deciding the questions agitated thereunder, making a reference about the impugned enactment and its validity are to be taken into account only as obiter/observations, and when the relief of declaration relating to constitutional validity is being prayed for the first time in this batch of Writ Petitions and all the grounds of challenge has not been made in detail and has not been considered and answered expressly in the earlier Judgment referred above and therefore cannot be said to be finally deciding the constitutional validity and therefore, the present batch of Writ Petitions cannot be termed as a second challenge, and the validity of it being decided

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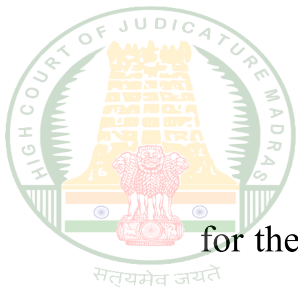
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for the first time in this batch of Writ Petitions by raising the relevant pleas, we hold that the challenge is maintainable and has to be answered on merits. Accordingly, we answer this issue in favour of the petitioners.

7. Question No.ii:

7.1. It is the contention of the petitioners that knowing the position of reservation which is already existing, they have given their best to prepare for NEET and they had a legitimate expectation to get into the medical courses as per their merit. While so, the impugned enactment which is the result of the policy decision of the Government to provide further 7.5% reservation hampers their legitimate expectation to be admitted into Medical Courses.

7.2. In ***Sejal Garg Vs. State of Punjab***[28]**,** a Division Bench of the Punjab & Haryana High Court held as follows:-

"21. The doctrine of legitimate expectation

[28] CWP.No.16886 and 17072 of 2019 (O & M) dated 17.07.2019

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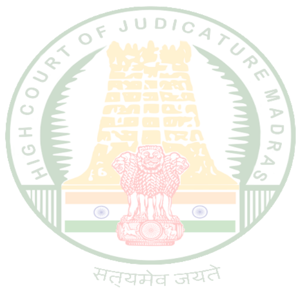
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is an extension of the doctrine of promissory estoppel. A Full Bench of the Bombay High Court in 'Ashwin Prafulla Pimpalwar Vs. State of Maharashtra, 1992 (1) SLR 179' has held in a case of admission to professional colleges, that promissory estoppel cannot be relied upon in such matters. The said judgment has been followed by a Division Bench of this Court in 'Nupur 30 of 32 (minor) and others Vs. Panjab University, Chandigarh 1996 (1) RSJ, 576, and it has been held that by invoking the principle of legitimate expectation, an authority cannot be divested of its statutory power. Change of policy cannot be barred by invoking the doctrine as larger public interest is involved. Such principles are ordinarily applicable to the commercial world and cannot be extended to the field of education because education is dynamic in nature and its evolution cannot be stifled. Thus, the reliance by the petitioner on the doctrine of legitimate expectation also deserves to be rejected."

7.3. In ***Nupur (Minor), D/o. Mrs.Madhu Vs. Punjab University***[29]***,*** it was again held as follows:-

"29.....*I may hasten to add, it is well established that the authority could not be divested of its statutory power or duty on the principles of 'just expectation'. The principles of 'just expectation' cannot be invoked where the*

[29] AIR 1996 PH 132

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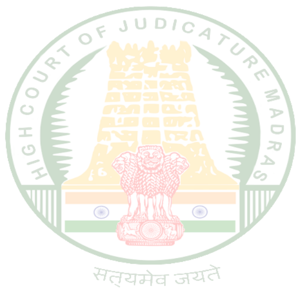
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> *public interest demands a change in policy in order to give equal opportunity or to adopt a better mode for evaluation of comparative merit, The principle of just expectation could not divest the authorities of their statutory powers or duties particularly while acting on the principle of just expectation it may result in unjust chaos. The principles does not debar the authorities to change its policy. Policy is of not surmountable nature. It is based on the principle of equity. One has no enforceable right not to have a policy altered to his detriment. On the analogy of the principle of equitable estoppel the rule of just expectation with respect to a policy no doubt can be changed on certain conditions being specified particularly when the public interest demands so and the authority changing the policy has acted fairly......"*

7.4. While dealing with the cases relating admission to the professional colleges, the Full Bench of the High Court of Bombay in the case of ***Ashwin Prafulla Pimpalwar Vs. State of Maharashtra and others***[30]**,** has held as follows:-

> "44.......*We have indicated earlier, while discussing the doctrine of promissory estoppel, some of the peculiar features of academic pursuits. They are not to be equated with*

[30] 1992 1 SLR 179 : AIR 1992 Bom 233

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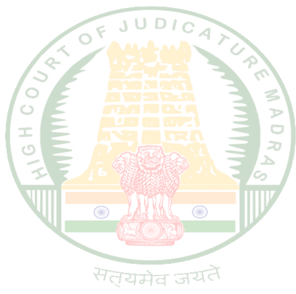

commercial activities or trade dealings, which raise questions of immediate and easily exigible profits and other advantages. In particular, prosecuting a postgraduate professional course could not be linked with a narrow and selfish desire for promotion of private interest. The very concept of a profession is the antethesis of activities of a lesser calibre. Merely because of a promulgation of a particular rule or order by the Government authorities, a student particularly aspiring for a post-graduate degree, and that too in a professional course, cannot with grace or legal force contend that he could have a legitimate expectation in the continuity of that advantage or benefit arising from the order which held the field at particular time despite an overriding or even a reasonable need of change. When viewed from the point of view of the duty of a Government to effect appropriate changes, whether it be in the matter of legislation, pure and simple, or in relation to its executive instructions, if and when circumstances warrant the same, such a restriction would be to make societies stagnant and the Government non-functional."

7.5. The Hon'ble Supreme Court of India, in the case of ***Monnet Ispat and Energy Limited Vs. Union of India and Others***[31]**,** held as follows:-

"153...... (v) *The protection of legitimate expectation does not require the fulfillment of the*

[31] (2012) 11 SCC 1

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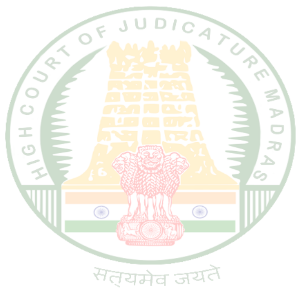
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> *expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."*

7.6. Further, the Hon'ble Supreme Court of India in the case of ***State of Himachal Pradesh and Another Vs. Kailash Chand Mahajan and Others***[32]**,** held as follows:-

> *"87..... Consequently, the answer to this question must be that community law as it now does not preclude legislation or a practice of a member State, whereby, a new condition not previously stipulated is laid down for the grant of licences to fish against national quotas."*
>
> ***Thus, it will be clear even legitimate expectation cannot preclude legislation.***"

7.7. On a consideration of the above pronouncements, it will be clear that:-

a. It cannot be contended that a student would have legitimate expectation as to the continuity of the same scheme of things in the matter of

[32] 1992 Supp (2) SCC 351

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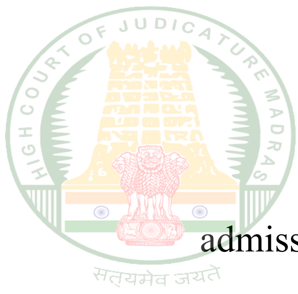
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admission to a professional course;

b. The principles of just expectation cannot be invoked when public interest demands a change of policy, which cannot be barred by invoking promissory estoppel;

c. The principles of legitimate expectation would give way to overriding public interest;

d. The doctrine of legitimate expectation does not preclude legislation enacted within the competency of the legislature.

7.8. Therefore, applying the four principles mentioned above in this case, since it relates to admission to professional courses and the impugned enactment is an outcome of legislative policy, made in consideration of overriding public interest, giving effect to the Directive Principles of State Policy as contained in Article 46 of the Constitution of India, it cannot be challenged on the principles of doctrine of legitimate expectation and we answer the question accordingly.

8. Question No.iii:

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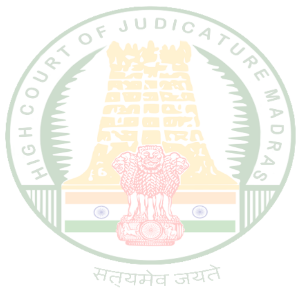
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8.1 While challenging the legislative competency in respect of the impugned enactment, it is the contention of the petitioners that the Union has exercised its power under the Entry No.66 of List -I of the Seventh Schedule, by enacting NMC Act. The Entry No.66 reads as hereunder:-

> *"66.Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions "*

8.2. Section 14 of the NMC Act mandates NEET, which is extracted as here under:-

> *"14. (1) There shall be a uniform National Eligibility-cum-Entrance Test for admission to the undergraduate and postgraduate super-speciality medical education in all medical institutions which are governed by the provisions of this Act: Provided that the uniform National Eligibility-cum-Entrance Test for admission to the undergraduate medical education shall also be applicable to all medical institutions governed under any other law for the time being in force. (2) The Commission shall conduct the National Eligibility-cum-Entrance Test in English and in such other languages, through such designated authority and in such manner, as may be specified*

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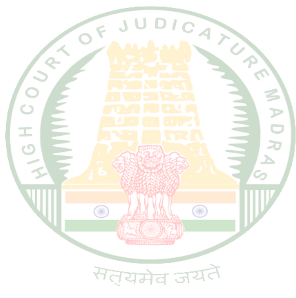

by regulations. (3) The Commission shall specify by regulations the manner of conducting common counselling by the designated authority for admission to undergraduate and postgraduate super-speciality seats in all the medical institutions which are governed by the provisions of this Act: Provided that the designated authority of the Central Government shall conduct the common counselling for all India seats and the designated authority of the State Government shall conduct the common counselling for the seats at the State level."

8.3. According to the petitioners, the Government of Tamil Nadu is tracing its legislative power to Entry No.25, in the concurrent List, which reads as hereunder:-

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

Therefore, it is the contention of the petitioners that when legislation is made by the Union, thereby, making NEET as mandatory, the State cannot be permitted to make any legislation, which has the effect of going contrary

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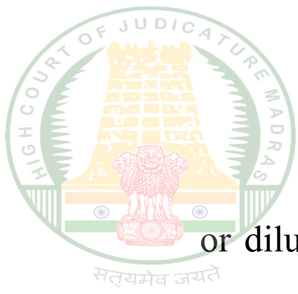

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or diluting the same. Therefore, they would contend that instant legislation which seeks to give a go-bye to the NEET merit, would be without legislative competency in the teeth of Section 14 of the NMC Act.

8.4. We are afraid that we can accept the said contention. The impugned legislation does not dispense with or in any manner dilute the mandatory of nature of the NEET or the minimum qualifying marks which are required to be scored by the students. The impugned enactment only makes horizontal reservation across the various categories in respect of the State Government School students, that too by following the *inter se* NEET merit among them. Therefore, it is incorrect to contend that it goes against the mandate of Section 14 of the NMC Act.

8.5. As a matter of fact, the Hon'ble Supreme Court of India had considered this issue in ***Tamil Nadu Medical Officers Association and Ors. Vs. Union of India***[33]**,** wherein the scope of Entry No.66 of List – I and the

[33] (2021) 6 SCC 568

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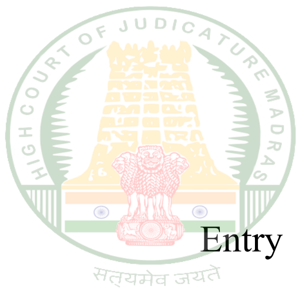
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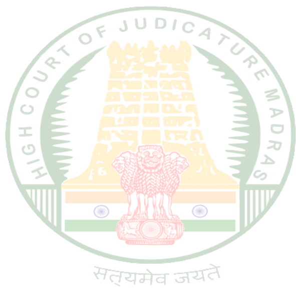
Entry No.25 of the List-III were examined and it is useful to extract the relevant portions of the paragraph No.10.3, which reads as hereunder:-

> "***10.3.*** *Thus, as held by the Constitution Bench of this Court in Modern Dental College [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , in which this Court considered a catena of earlier decisions of this Court dealing with the scope and ambit of List I Entry 66, List I Entry 66 is a specific entry having a very specific and limited scope; it deals with "coordination and determination of standards" in institutions of higher education or research as well as scientific and technical institutions. It is further observed that the words "coordination and determination of standards" would mean laying down the said standards and therefore when it comes to prescribe the standards for such institutions of higher learning, exclusive domain is given to the Union. It is specifically further observed that that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc.* ***Thus, in exercise of powers under List I Entry 66, the Union cannot provide for anything with respect to reservation/percentage of reservation and/or even mode of admission within the State quota, which powers are conferred upon the States under List III Entry 25. In exercise of powers under List III Entry***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> ***25, the States have power to make provision for mode of admissions, looking to the requirements and/or need in the State concerned. "***

8.6. Similarly, in the case of ***Modern Dental College & Research Centre Vs. State of M.P.***[34], the power of the State to bring in regulations relating to admissions was upheld and it is useful to extract the paragraph No.148 of the Judgment, which reads as under:-

> *"148.In view of the above discussion, it can be clearly laid down that power of the Union under Entry 66 of the Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country.* ***Thus, the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process. In no case is the State denuded of its power to legislate under List III Entry 25. More so, pertaining to the admission process in universities imparting higher education."***

8.7. Thus, the impugned enactment is in the realm of the powers of the

[34] (2016) 7 SCC 353 : 7 SCEC 1

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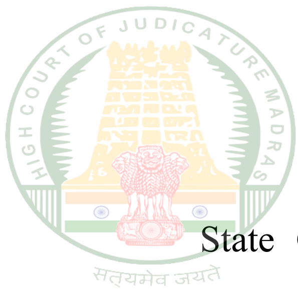
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State Government providing mode of admissions and to look into the requirements and need of the same, and therefore, it operates in a different field, it does not in any manner operate in conflict with the NMC Act, and therefore, we answer the question that State of Tamil Nadu does not lack legislative competency to enact the impugned enactment.

Question No. iv:

9.1. The next attack of the petitioners is that the impugned legislation which discriminates between the State Government School students and the other students including the Central Government School students, cannot stand scrutiny of the Article 14 of the Constitution of India. The State making a discrimination is to satisfy the doctrine of proportionality i.e., to justify the impugned measures or on the necessity and balancing test after justifying the reasonableness of the action, the State also has to demonstrate the rational nexus to the object sought to be achieved.

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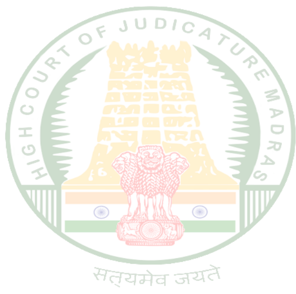
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9.2. According to *Mr.Sriram Panchu*, the learned Senior Counsel for the petitioners, even if there is cognitive gap, the reasonable action expected of the State is only to bridge the cognitive gap, by providing special facilities such as coaching class, improvement of standards etc, and providing of quota is unreasonable. The course adopted i.e., providing 7.5% reservation does not in any manner, further the object sought to be achieved. Even as per the data provided in the report of *Mr. Justice P. Kalaiyarasan* Commission, a majority of these students belong to the reserved category communities and therefore, when already the reservation has been provided for, the further reservation, by way of present enactment, is unreasonable.

9.3. On the contrary, it is the contention of *Mr.Kapil Sibal*, learned Senior Counsel appearing for the State that the classification is based on cognitive gap present amongst the students of the Government Schools and the other schools. According to him, the report of the commission demonstrates that the students who are from less affluent background and

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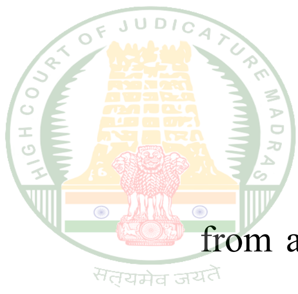

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from affluent background have a significant gap in cognitive development. These students have disadvantages in terms of caste, wealth, parental occupation, parental education and gender. The economical backwardness and the ruralness combined together, coupled with their social backwardness, no access to the coaching class, etc are the causes. The commission has given facts that more than 90% students who get admitted into these courses had coaching facilities. This creates psychological barrier for the Government school students. The study, as a matter of fact, found that the admissions to the courses vary according to the school type, social background, parental income and medium of instructions and gender and the Government School children who are having parents, who are more specifically 83% of fathers and 65% of mothers being daily wage labourers and whose income is nine times lesser than the average income of the students in ICSE and CBSE schools, form a clause among themselves. Therefore, these factors form the intelligible differentia to adopt the course. When the State is within its rights to provide for reservation for these

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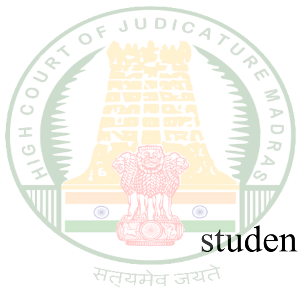
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students, which actually has resulted in furthering the cause, as prior to provision of reservation, only six Government schools students got admission, while pursuant to the impugned enactment in the next year a total number of 435 Government schools students could get admission would by itself demonstrate that the classification is rational and has relation to the object sought to be achieved.

9.4. Before weighing the submissions made by the both sides, the basic principles to answer this question are:-

a) There is a presumption in favour of the constitutionality of the Statute;

b) The Courts would not weigh the various courses available, while deciding about the correctness of the classification, but, only test whether the particular course adopted by the State is after taking intelligent care, based on the intelligible differentia, which has a nexus to the object sought to be achieved.

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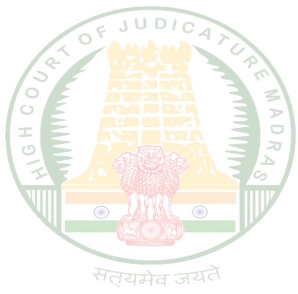
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9.5. In the instant case, the State has followed the process of appointing a commission to study the relevant factors, data and after receipt of the report of the commission and its recommendations and after considering the same, has taken recourse of enacting the impugned legislation. The relevant paragraphs of the fact findings of the conclusions arrived at by the committee were extracted supra in paragraphs 4.19 and 4.20 supra. The average annual income of the parents of a Government school student is Rs. 46,686/- while that of the CBSE student is Rs.4,69,413/- and ICSE student is Rs.4,77,263/-; 83% of their fathers and 65% of their mothers are daily wage labourers; 3% belong to Scheduled Tribe, 32% belong to Scheduled Castes, 37% belong to Most Backward class and de-notified communities, 27% Backward class and 1% belong the general category. These hard facts are the reality and which cannot be brushed aside while determining equality.

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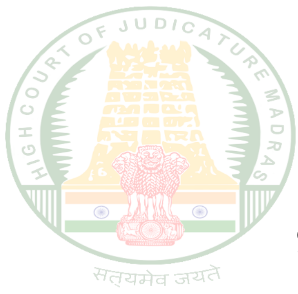
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9.6. The Hon'ble Supreme Court of India, has in the recent Judgment of ***Neil Aurelio Nunes and Ors. Vs. Union of India and Ors***[35]**,** had held that reservation is no longer an exception to the principles of equality contained in Article 14, but, it is a facet of the Article 14 itself, and that is considering to be as mandatory to further, the principles of substantive equality in paragraph No.31 of the Judgment was extracted in paragraph No.4.15 of this Judgment supra.

9.7. In ***Jagadish Saran vs. Union of India***[36]**,** the Hon'ble Supreme Court of India, held that the State has a bounden duty to ensure real equality and has held that the reservation is a process to get over the handicap of the educationally handicapped class, the relevant paragraphs are extracted hereunder:-

> "***31.*** *We agree with this approach and feel quite clearly that the State's duty is to produce real equality, rather egalitarian justice in actual life.*

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[35] 2022 SCC OnLine SC 75

[36] 1980 (2) SCC 768

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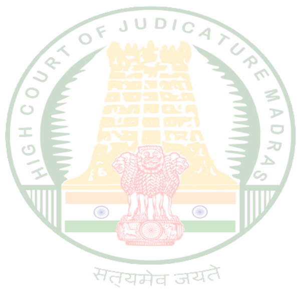
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__32.__ If university-wise classification for post-graduate medical education is shown to be relevant and reasonable and the differentia has a nexus to the larger goal of equalisation of educational opportunities the vice of discrimination may not invalidate the rule.

__35.__The case for reservation argues itself once we establish an operational relationship between the benign basis of such classified quota or like preference and the object to be achieved viz. promotion of better opportunities to the deprived categories of students or better supply of medical service to neglected regions of our land. But the Delhi University, city or students, do not fit into the criteria.

__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 like 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 speciality the lesser the role of reservation. Such being the pragmatics and dynamics of social justice and

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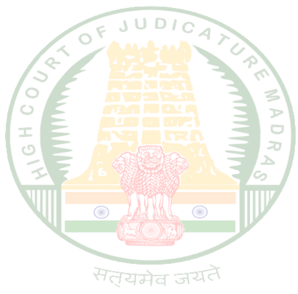
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equal rights, let us apply the tests to the case on hand.

42. *MBBS is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups, institution-wise chosen, without injury to public welfare. It produces equal opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise. Moreover, the better chances of candidates from institutions in neglected regions setting down for practice in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. After all, it is quite on the cards that some out of these candidates with lesser marks may prove their real mettle and blossom into great doctors. Again, merit is not measured by marks alone but by human sympathies. The heart is as much a factor as the head in assessing the social value of a member of the profession. Dr Samuel Johnson put this thought with telling effect when he said:*

"Want of tenderness is want of parts, and is no less a proof of stupidity than of depravity."

We have no doubt that where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly

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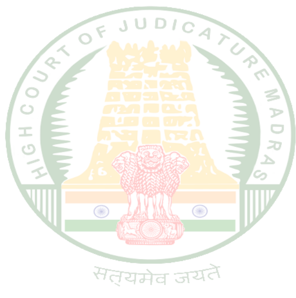

militates against the equality mandate viewed in the perspective of social justice."

9.8. The Hon'ble Supreme Court of India, in the case of ***State of Kerala and Another Vs. N.M.Thomas and Ors***[37]**,** has held that it is the positive obligation of the State to adopt a standard of proportional equality taking into account differing conditions and circumstances of class of citizens, whenever such conditions stand in the way of equal access to the enjoyment of basic rights and claims. Therefore, provision for horizontal reservation in the instant case, in furtherance to ensure access to the rights to get into medical courses, after undertaking a detailed study, which has concrete findings based on data about the significant cognitive gap and the various factors, which contribute to that, which is not necessarily, non-provision of standard of education etc, the classification cannot be held to be unreasonable.

9.9. As per the facts and conclusions of the commission and as

[37] 1976 (2) SCC 310

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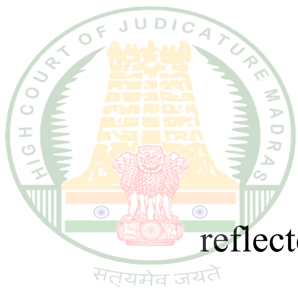
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reflected by the Hon'ble Supreme Court of India, in ***Neil Aurelio Nunes and Ors. Vs. Union of India and Ors***[38], in paragraph No. 4.15 of this judgment, even if provided with the same set of coaching facilities or standard of education, on account of socio educational economical background, the cognitive gap will still be significantly there, which requires a positive discrimination by the State and in the instance case what is provided, is only horizontal reservation.

9.10. *Mr.Sriram Panchu*, learned Counsel would place strong reliance on the Judgment of the Hon'ble Supreme Court of India in ***State of A.P Vs. U.S.V Balram, etc***[39]**.** In the said case, the distinction between the Higher Secondary School and P.U.C candidates was held to be not justified, as both stream of students were admitted on the basis of Common Entrance Test (CET). However, the primary difference between the facts of the case in ***U.S.V Balram***[40] and the present case is that the exercise to provide 40% of

[38] 2022 SCC Online SC 75

[39] 1972 (1) SCC 660

[40] 1972 (1) SCC 660

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quota to the Higher Secondary School students which was not sought to be justified as reservation, under Article 15(4) of the Constitution of India. Therefore, once it is contended that exercise in question is a reservation saved by Article 15(4) of the Constitution of India, then the Judgment has no application to the facts of the instant case.

9.11. Further, as rightly contended by *Mr.Kapil Sibal*, learned Senior Counsel, as far as the Judgment in ***Suneel Jatley***[41]**,** is concerned the Court found on facts that a student has to study the class up to eight in a rural school, and thereafter, join an urban school, for a period of four years before taking medical entrance examination and further given the demographic nature of State of Haryana, the factum as to the backwardness of the rural candidates was found to be incorrect. Whereas, in the instance case, absolutely no exception can be taken to the findings of the report of the Hon'ble *Mr. Justice P. Kalaiyarasan* commission that there is a huge cognitive gap between the other students and the Government school

[41] 1984 (4) SCC 296

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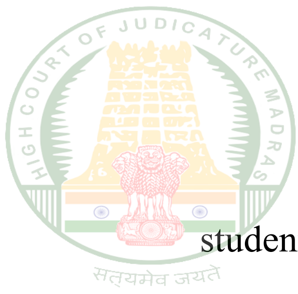
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students owing to the various factors mentioned therein. Therefore, the ratio of the recent Judgment of ***Neil Aurelio Nunes and Ors. Vs. Union of India and Ors***[42]***,*** applies to the instant fact situation more appropriately, and therefore, we reject the contentions of the petitioners.

9.12. Considering the nexus further, it may be seen that perse the object of the impugned enactment is, to provide for preference in admission to undergraduate courses in Medicine etc., which is what it does exactly. Considering the larger purpose of admitting students based on 'Merit' and to have a robust healthcare system, it may be seen that the concept of merit was originally explained by the Supreme Court of India in ***Pradeep Jain Vs Union of India***[43]***,*** in paragraph 12, which is reproduced as hereunder :-

> *"12. ... Merit cannot be measured in terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head, in assessing the social value of the member of the medical profession.."*

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[42] 2022 SCC Online SC 75

[43] 1984 3 SCC 654

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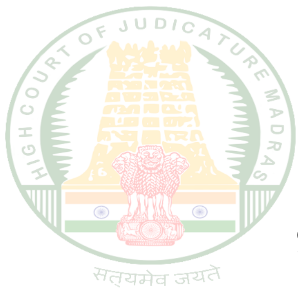
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9.13. The above was explained further in detail in ***Neil Aurelio***[44] in paragraphs 32-39 in detail. Doctors are the backbones of any robust healthcare system. India, aims to be one of the global leaders in provision of quality healthcare and is marching in that direction. We have the best of the brains performing the most complex surgeries, marking India on the world health tourism map, patients flying in from across the globe to get treated. We also have the brave-hearts, working in those primary health centers in remote villages, under makeshift facilities, facing pathetic patients, who turn up with worms and puss in their body, at very advanced stages of their ailments, and still empathize with them, treat them, performing their best under the given conditions. Medical Education in our country is one of the best, strenuous with lot of practical experience. Peers/Seniors play an important role in the learning output. The diverse background of the students of the group helps them overcoming their respective shortcomings and to impart their advantages on others, thus enhancing the quality of education. Therefore, even considering the larger purposes of Merit, Quality Medical

[44] 2022 SCC Online SC 75

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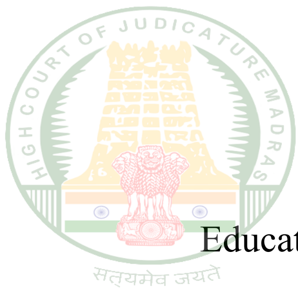
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Education or Quality Healthcare System, the impugned preference has nexus to the objective. Thus, provision of an opportunity to a government school student of a socially and economically weaker background is to make him overcome the disadvantages so as use to the full of his natural endowments of physique, character and intelligence, has a sound rational and is in tune with the objects sought to be achieved and therefore, we hold that the impugned enactment is not violative of Article 14 of the Constitution of India.

Question No. v:

10.1. The next ground of the attack of the impugned legislation is that the fact of providing reservation/preference to the State Government schools is violative of Article 15(1) of the Constitution of India. According to the petitioners, the Government School Students cannot be said to be socially and educationally backward class. More so, when the State Government has not consulted the backward class commission as per Article 342-A. Further,

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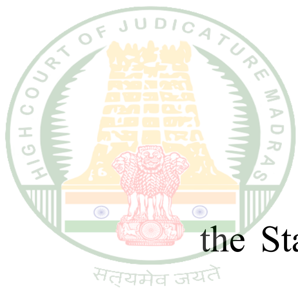
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the State of Tamil Nadu has already having crossed the threshold limit of 50%, cannot make further reservation under Article 15(4) of the Constitution of India. Therefore, once it is clear that reservation cannot fall within the Article 15(4), then it is violative of Article 15 of the Constitution of India. Therefore, the impugned enactment is liable to be declared as *ultra vires*.

10.2. *Mr. Sriram Panchu*, learned Senior Counsel would rely upon the Judgment of ***Minor S. Muthu Senthil Vs. State of T.N***[45]**,** whereby the Full Bench of this Court had held that the reservation in favour of the rural school is violative of Article 15 of the Constitution. He would further place reliance on the Judgment of this Court in ***V. S. Sai Sachin vs. State of Tamil Nadu***[46]***,*** whereunder the quota fixed to the State Government students and the CBSE students was held as invalid and would contend that the impugned enactment is unconstitutional. Finally, relying upon the Judgment of the Hon'ble Supreme Court of India, in ***Dr.Jaishri Laxmanrao Patil Vs. Chief***

[45] (2002) 1 LW 577 (Mad) (FB) : 2002 SCC Online Mad 57

[46] 2017 SCC Online Mad 2811 : 2017 (4) CTC 337

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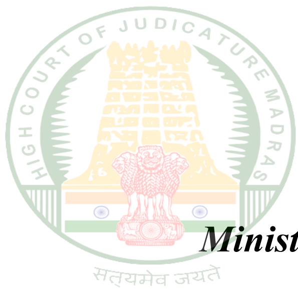
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Minister and Ors.[47]***,*** whereunder provisions of quota to *Marathas* beyond 50% threshold was held to be unconstitutional he would submit that the 69% reservation can no more be permitted and would submit that the impugned enactment therefore cannot be saved under Article 15(4) and should be declared as unconstitutional.

10.3. Per contra, *Mr.Kabil Sibal*, placing strong reliance on ***Neil Aurelio Nunes***[48]***,*** would submit that the social and educational backwardness of the Government School students is because of the '***structural barrier***', which is enunciated by the Hon'ble Supreme Court of India and this structural barrier is on account of the various factors such as caste, wealth, parental occupation and parental education, gender, access to coaching centers, which places them in a socially and educationally backward position, make them as a class to be qualified to be provided reservation under Article 15(4) of the Constitution of India. The State Government has

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[47] 2021 SCC Online Sc 362

[48] 2022 SCC Online SC 75

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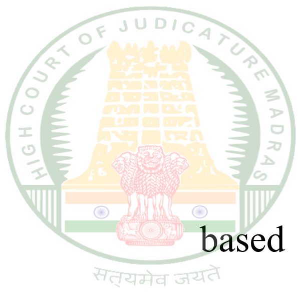
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based its finding as to the socio and educationally backwardness on sound data collected and scientific conclusions drawn by a proper analysis of the data. Therefore, the same is saved by Article 15(4) of the Constitution of India.

10.4. Upon considering the various details and data contained in the report and the salient provisions of the impugned enactment, providing for 7.5% of horizontal reservation, we hold that as contended by the Learned Senior Counsel appearing for the State, the students of the State Government schools enumerated in the Act are a 'socially and educationally backward class', therefore, the reservation in their favour is will be within the power of the State as contained in Article 15(4) of the Constitution of India.

10.5. The Hon'ble Supreme Court of India, has earlier held in ***M.R.Balaji and Ors., Vs. State of Mysore and Ors.***[49]**,** in paragraph No.24, held as follows :-

[49] 1992 Supp (1) SCR 439

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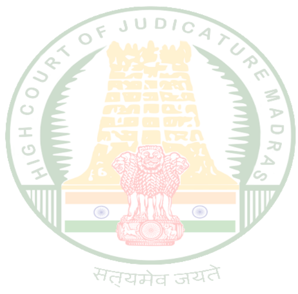
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"24. The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fell within the purview of Article 15(4). ***The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said date in a rational and scientific way. That is the function of the State which purports to act under Article 15(4).*** *All that this Court is called upon to do in dealing with the present petitions is to decide whether the tests applied by the impugned order are valid under Article 15(4). If it appears that the test applied by the order in that behalf is improper and invalid, then the classification of socially backward classes based on that test will have to be held to be inconsistent with the requirements of*

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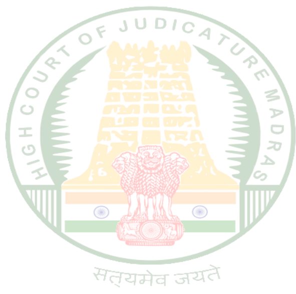
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Article 15(4).”

10.6. Again, in ***Kumari K.S. Jayasree v. The State of Kerala***[50]***,*** it was held that :-

> “10. *In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the groups of citizens, Caste cannot, however, be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by considerations of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness.”*

10.7. In ***Indra Sawhney***[51],while considering the matter in the context of Article 16, it was held as follows :-

> *“117. Coming to Article 16(4) the words ‘backward class’ are used with **a wider connotation and without any qualification or***

[50] (1976) 3 SCC 730 : AIR 1976 SC 2381

[51] 1992 Supp (3) SCC 217

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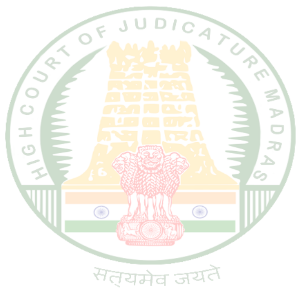
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> ***explanation. Therefore, it must be construed in the wider perspective.*** *Though the OMs speak of social and educational backwardness of a class, the primary consideration in identifying a class and in ascertaining the inadequate representation of that class in the services under the State under Article 16(4) is the social backwardness which results in educational backwardness, both of which culminate in economic backwardness. The degree of importance to be attached to social backwardness is much more than the importance to be given to the educational backwardness and the economic backwardness, because in identifying and classifying a section of people as a backward class within the meaning of Article 16(4)for the reservation of appointments or posts, the 'social backwardness' plays a predominant role."*

10.8. Thus, the Government School students as a class who fit well within the meaning given to the phrase 'Socially and Educationally Backward class" right from ***M.R. Balaji***[52] or ***Indra Sawhney***[53] upto ***Neil Aurelio***[54]. Rather than providing reservation based on a sole criteria we find that the instant provision is a step towards determining the social and

52 1992 Supp (1) SCR 439

53 1992 Supp (3) SCC 217

54 2022 SCC Online SC 75

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economical backwardness on a wholesome basis by taking into account multiple factors including caste, wealth, parental education, parental income, parental occupation, gender, living standard, psychological factor, medium of instruction, location of the school, non-availability of private coaching, affordability for repeat appearance in the exam etc. Therefore we reject the contention of the petitioners that the Government School Students by themselves cannot be a socially and educationally backward class. Even as per the latest Judgment of the Hon'ble Supreme Court of India, in ***Pattali Makkal Katchi Vs. A. Mayilerumperumal and Others***[55], in paragraph No.54, it has held that Caste coupled with the other factors can be a basis for providing internal reservation. The relevant paragraph No.54 is extracted hereunder:-

> *"**54.** As already stated, the 2021 Act deals with matters which are incidental or ancillary to those contained in the 1994 Act and the State is competent to legislate on such matters. It is for the State to decide whether a legislation, which is not repugnant to any law made by the Parliament on the same subject matter, should receive the*

[55] 2022 SCC Online SC 386

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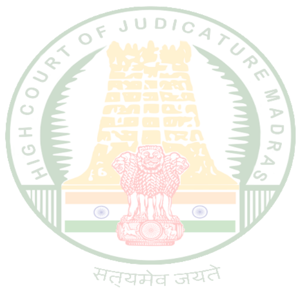
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assent of the President or not. If the assent of the President is not sought, the consequence is that the statute made by the State is susceptible to challenge as being violative of Article 14 or Article 19. However, it cannot be said that the State cannot legislate on subject matters, ancillary to that of an earlier statute which has received the assent of the President, or that it is mandatory for the State Government to seek the assent of the President for a legislation which the State is otherwise competent to enact. In Indra Sawhney (supra), Jeevan Reddry, J., writing for himself and three other judges, conclusively clarified that Article 16(1) is a facet of Article 14 and just as Article 14 permits reasonable classification, so does Article 16(1), which means that appointment and/or posts can be reserved in favour of a class under clause (1) of Article 16. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. It was further noted that Article 16(4) is an instance of such classification, put in to place the matter beyond controversy. Where the State finds it necessary - for the purpose of giving full effect to the provision of reservation to provide certain exemptions, concessions or preferences to members of backward classes, it can extend the same under clause (4) itself. Pandian, J. while tracing the legislative history of Article 15(4), observed that the object of Article 15(4), introduced by the Constitution (First Amendment)

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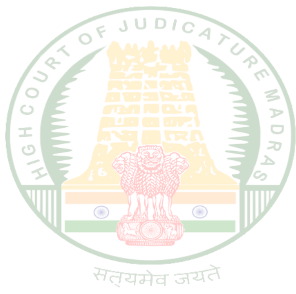
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Act, 1951, was to bring Articles 15 and 29 in line with Articles 16(4), 46 and 340 and to make it constitutionally valid for the State to reserve seats for backward class of citizens, Scheduled Castes and Scheduled Tribes in public educational institutions as well as to make other special provisions as may be necessary for their advancement. From these observations and findings, it is clear that States are empowered to make reservation for backward classes under Articles 15(4) and 16(4). We see no force in the submissions of Mr. Vijayan, who attempted to convince this Court that the State Legislature's source of power for enacting the 2021 Act cannot be traced to any Entry in the Lists under the Seventh Schedule of the Constitution."

10.9. As far as the second limb of the argument relating to the Article 342-A is concerned, on a proper reading of the said Article as it stood before the 105th Amendment and after the 102nd Amendment, it would be clear that it provided for a notification to include a particular class of persons to avail the benefit of reservation provided the state and issue of such notification shall be after consulting the Backward Class Commission. That is to say that if the State has proved 20% quota to the backward classes, but wants to

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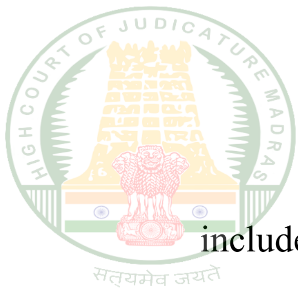
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include any community within the 20% quota, the state has to make a notification after consulting the Backward Class Comission. Whereas the instant case is not including any person in the quota provided, but introdcuing a new criteria altogether by way of horizontal reservation (including Scheduled Castes, Scheduled Tribes and Open General Category) and therefore the contention that Article 342-A is not complied with is fallacious. The Hon'ble Supreme Court of India, in the recent Judgment of ***Pattali Makkal Katchi Vs. A. Mayilerumperumal and Others***[56]**,** has held as follows:-

> *"**32.** What the 102 Amendment prohibits the State from undertaking is identifying a caste as SEBC or including or excluding a community from the list notified by the President. We are not in agreement with the contention of the Respondents that determining the extent of reservation for a community amongst the list of Most Backward Classes amounts to identification."*

Further, after the coming into effect of the Constitution, 105th Amendment Act, and after the same Article 338-B and 342-A read as follows:-

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[56] 2022 SCC Online SC 386

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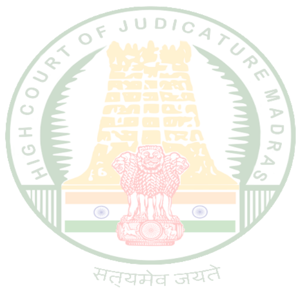

*"**Article 338-B. National Commission for Backward Classes.**- (1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes. xxx (9) The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes.*

Provided that nothing in this clause shall apply for the purposes of clause (3) of article 342-A.

***Article 342-A. Socially and educationally backward classes**.-*

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes in the Central List which shall for the purposes of the Central Government be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. Explanation.- For the purposes of

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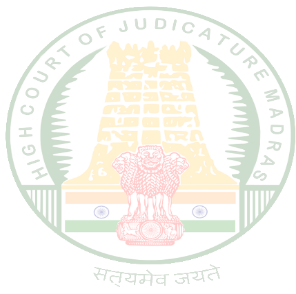
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clauses (1) and (2), the expression "Central List" means the list of socially and educationally backward classes prepared and maintained by and for the Central Government.

(3) Notwithstanding anything contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List."

Therefore, from the proviso Article 338 B, it would be clear that in respect of the powers exercised by the State under Article 342-A (3), the provisions of Article 338 (B) are not applicable and therefore, the said submissions are without any merits.

10.10. The third limb of the arguments is that it exceeds 50% and therefore, it should not be permitted. Firstly, Hon'ble Supreme Court has in ***Saurav Yadav and Ors Vs. State of Uttar Pradesh and Ors.***[57], considered the salient features and manner of implementation of Horizontal Reservation, when it considered the question as to the manner of filling up

[57] (2021) 4 SCC 542

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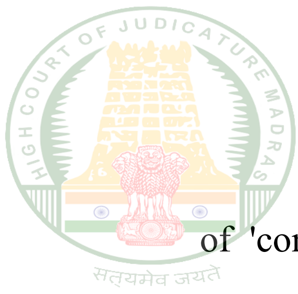

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of 'compartmentialised horizontal reservation' in respect of open general (women) category. While dealing with the question as to whether the Women candidates belonging to reserved catgeories, if fall within the zone of consideration while applying the horizontal quota, the nature of horizontal reservation is dealt with extensively and all the earlier judgments in this regard are quoted with approval. In Paragraph No.21.1 ***Indra Sawhney***[58] is quoted which is as under **:-**

> ***21.1.*** *Jeevan Reddy, J. speaking for himself and on behalf of three Judges of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] observed as under : (SCC pp. 735-36, para 812)*
>
> *"812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture : all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations". The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4)] may be called vertical*

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[58] 1992 Supp (3) SCC 217

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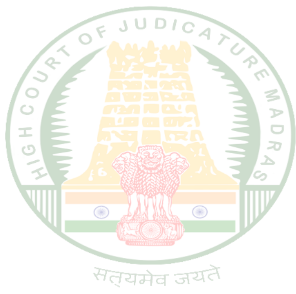
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reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. ***The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same****. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”*

In paragraph 21.5, the Judgment of the Constitution Bench in ***K. Krishnamurthy Vs. Union of India***[59] is quoted, which is extracted hereunder:-

“***21.5.*** *In K. Krishna Murthy v. Union of India [K. Krishna Murthy v. Union of India, (2010) 7 SCC 202 : (2010) 2 SCC (L&S) 385] , a*

[59] (2010) 7 SCC 202

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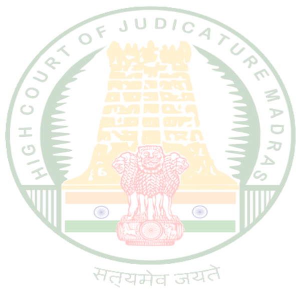
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Constitution Bench of this Court observed that seats earmarked for women belonging to the General Category are not accounted for, if one has to gauge whether the upper ceiling of 50% has been breached. The observations were as under : (SCC pp. 222 & 227, paras 44 & 64)"

"44. With respect to the State legislations under challenge, it was argued that the 50% ceiling would not be crossed under most of them since it is only the vertical reservations (i.e. on communal lines in favour of SCs/STs/OBCs) that are taken into consideration for this purpose. ***Even though there is a 33% reservation in favour of women in elected local bodies, the same is in the nature of a horizontal reservation which intersects with the vertical reservations in favour of SCs/STs/OBCs. In such a scenario, the seats occupied by women belonging to the general category cannot be computed for the purpose of ascertaining whether the 50% upper ceiling has been breached."***

10.11. After examining the nature of Horizontal Reservation in detail, the Hon'ble Supreme Court has also affirmed the steps in which one has to proceed to implement the veritical and horizonal reservations, thereby affirming the steps provided by the Judgment of the Gujarat High Court in

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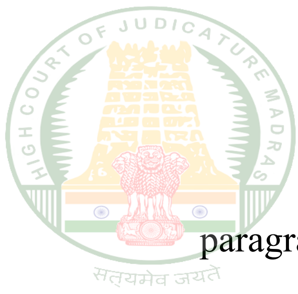
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paragraph 23.11 of the Judgment. On a careful reading of the Judgment it would be clear that the impugned enactment also provides for compartmentalised horizontal reservation. The effect of Horizontal reservation can never be enhancement of the quota or the threshold limit of reservation. On the other hand, after preparing the merit list, as prescribed by the Hon'ble Supreme Court, the Government school Students will be adjusted as per the respective quota. A stage may come where if 7.5% of the Government School Students come on their own merit, the present reservation will be relegated only in principle. Therefore, the contention of the petitioners is unacceptable.

10.12. This apart, it is the contention of the State of Tamil Nadu that even in the Judgment of ***Indra Sawhney vs. Union of India***[60], it has been held that rule regarding 50% is not inviolable and considering the exceptional circumstances, that is, the demography of the state, it has enacted the legislation viz., *The Tamil Nadu Backward Classes, Scheduled*

[60] 1992 Supp (3) SCC 217

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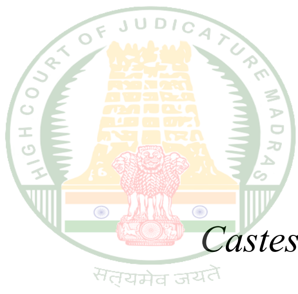
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Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services Under the State) Act, 1993, which received accent of the President of India, which was placed under the 9th Schedule of the Constitution. However, the same is also under challenge, which is pending before the Hon'ble Supreme Court of India and pending the same, the state is permitted and continues to operate 69% reservation in the State. Under these circumstances, in this Writ Petition, this Court cannot pronounce the validity or otherwise of the reservation in excess of 50% threshold limit, as the matter is pending before the Hon'ble Supreme Court of India , especially when the matter before us is relating to Horizonal Reservation.

10.13. For all the reasons stated above, we answer the question that the reservation by provision of 7.5% quota to Government Schools students, is permissible reservation as socially and educationally backward class under Article 15(4) and Article 15(5) read with Article 46 of the Constitution of

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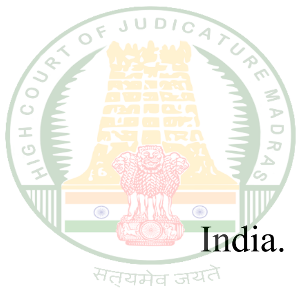
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India. Since we are inclined to accept the contention of *Mr.Kapil Sibal*, Learned Senior Counsel that the impugned enactment is valid as a reservation for socially and economically backward class under Article 15(4) of the Constitution of India, it is not necessary to go into the alternative submissions made by *Mr.P.Wilson*, the other Learned Senior Counsel for the Education Department, contending that the reservation/preference can otherwise be justified as institutional reservation or special preference under Article 15(1) of the Constitution of India. Therefore, we answer the question accordingly.

10.14. It is to be noted that the commission itself in paragraph No.9 under of its report the heading of "Suggestive measures and justifications for quantum in reservation" had suggessted the measures to be undertaken by the State of Tamil Nadu to improve the quality of education and also to take care of the meritorious students, and in paragraph No.10.(3) of "Conclusion and Recommendations" has suggested that the State Government to review

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the above reservation and the said paragraph No.10.3 is extracted hereunder:-

> *"10. (3) Reservation to the Government school students in getting admission to MBBS course has to be reviewed by the State Government after a period of 5 years from the date of the implementation."*

The State Government is, therefore, directed to review the same in a period of five years, as otherwise recommended by the Commission, and during the intervening period, steps be taken to improve the standard of education imparted in the Government Schools, so that the reservation may not further be extended beyond a period of five years.

10.15. Before parting, we place on record our empathy with the petitioners who put in such hard work to be in the reckoning towards realising their dream. At the same time, the petitioners have to take this in the right spirit like when we stand at the start line of a running race and if a person has a difficutlty, we allow this person to start at some distance ahead

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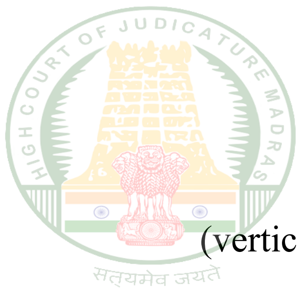
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(vertical reservation) or take him along with us (horizontal reservation) and will not say 'get out if you can't run like me'. After all, the Supreme Court says, 'human sympathies' are also part of 'merit'.

B. Challenge to the non-inclusion of aided schools:

11.1. The second set of Writ Petitions are filed by the aided schools and their association. Their grievance is that while they support the preferential quota of 7.5% to the students of State Government Schools, while including the schools run by the State Government, Panchayat Union, Municipal Schools, Corporation Schools, Adi-Dravidar and S.T Welfare Schools, Kallar reclamation B.C/M.B.C/Differently-Abled Welfare/Forest/ Social Defence (Borstal Schools) Department Schools and Residential – Access Schools, the Government Aided Private Schools alone were left out. Therefore, the impugned enactment in as much as it leaves out the Aided Schools is discriminatory and illegal.

11.2. Heard *Mr.Fr.Xavier Arulraj*, the learned Senior Counsel leading

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the arguments on behalf of these Writ Petitioners. The learned Senior Counsel, taking this Court through the objections submitted by the various societies and educational agencies running these schools, impressed upon this Court that these are the schools which are majority Tamil medium for the poor students, run with the service motive by these societies, without any profit whatsoever. Like the Government Schools, absolutely they do not charge any extra fees on the students and they are not permitted to do so also as their entire school accounts is subject to audit by the Education Department. The entire salary of the teaching staff, and depending on the strength the other administrative staff is also sanctioned and fully aided by the Government. In various other endeavours, including Educational Policy of the Government of the year 2020, these schools are always treated on the par with the Government Schools. For the first time, when the Government enacted the impugned enactment, they were left out. Therefore, treating the equals as unequals, that is, when the Government of Tamil Nadu has decided that the students predominantly belonging to reserve category communities

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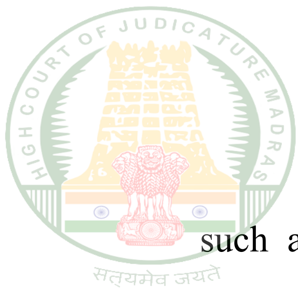
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such as Scheduled Castes, Scheduled Tribes, Most Backward Class and Backward Class, having parents of low income, coming from extremely less background, who cannot afford coaching classes and other facilities, predominantly from rural background, having a cognative gap as 'socially and educationally backward', the students of these aided schools who are also similarly and exactly situated cannot be left out and therefore, the impugned legislation is discriminatory inasmuch as it does not in definition 2(c) includes these aided schools.

11.3. The Learned Senior Counsel would submit that as a matter of fact, the educational department of the State Government sanctions post, pays for them, approves the appointment, approves all the disciplinary or other action taken against the teaching or other staff and the educational agency co-ordinates the running of the school and therefore, non-inclusion of these schools within the definition of 2(c) is discriminatory and cannot stand the scrutiny of Article 14. There is no intelligible differentia to

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discriminate between the students of these aided schools and the schools which are actually included in the Act.

11.4. He would submit that even in respect of the operation of Nutritious Noon-Meal Scheme, Teacher-People ratio, Welfare Schemes of Government such as distribution of *Text books, Note-books, Laptops, Uniforms, Footwear, School bags, Crayons, colour pencils, Geometry boxes, Atlas, woollen sweaters, Rain coats, boots and Jacks, Bus Pass, Bicycles, Financial Assistance to students* etc., these schools are treated on par with that of the Government Schools.

11.5. The learned Senior Counsel would submit that the Government even while referring the matter under Rule 110 left out the Aided Schools in a pre-determined manner. The report of the Commission in as much as these Aided Schools are concerned, is without any scientific data without considering the common factors such as backwardness of wealth, parental

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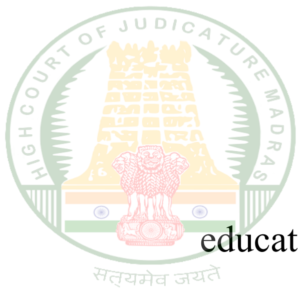
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education etc. He would rely upon paragraph No.21 of the judgment in ***State of M.P. Vs. Gopal D.Tirthani***[61], which is extracted hereunder:-

> *"**21.** To withstand the test of reasonable classification within the meaning of Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (I) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the groups, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate-General under instructions from Dr.Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court."*

Therefore, he would submit that the impugned enactment should be held as unconstitutional inasmuch as it discriminates among equals.

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61 (2003) 7 SCC 83

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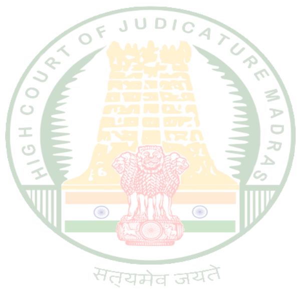
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11.7. Opposing the above submissions, *Mr.Kapil Sibal*, learned Senior Counsel would submit that it was not any ommission or any pre-conceived decision on the part of the Government in not including the Aided School, but, is based on the findings of the report of the Commission constituted for the purpose. Relying upon paragraph No.7.3.3 of the report of Hon'ble Mr.Justice P.Kalaiyarasan Commission, he would submit that the Commission has found that across all categories such as social background, parental income etc., students from Aided Schools are significantly better placed than the students from Government Schools. Similarly, relying on 7.3.1.4(b), he would submit that the students in Government Schools are from more backward social categories than the students from Aided Schools. Even among the social category, students from Aided Schools perform better than the Government Schools and parental income is higher for the students from Aided Schools, which is clear from the finding in paragraph No.7.3.1.4(c) of the report.

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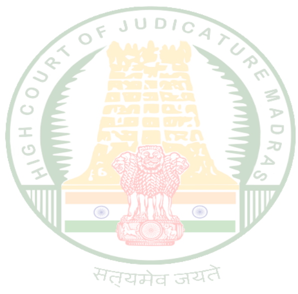

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11.8. Placing reliance on 7.3.1.4 (d) of the report, he would submit that more students from Aided Schools are educated in English Medium and it has been found that even when students educated in English medium form a minority in both Government and Aided Schools, they disproportionately outperform Tamil Medium students. Further relying upon paragraph No.7.3.3, he would submit that there is a significant gap in the performance between the students from Government Schools and Aided Schools and therefore, he would submit that since the challenge is one of non-inclusion, the test that is applicable is one of proportionality.

11.9. He would submit that it is open to the State to recognize the degree of harm and confine restrictions or benefits to those cases where the need is the clearest. Ostensible under-inclusiveness can nevertheless be upheld on the basis of recognition of degrees of harm, administrative convenience and legislative experimentation. In this regard, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of

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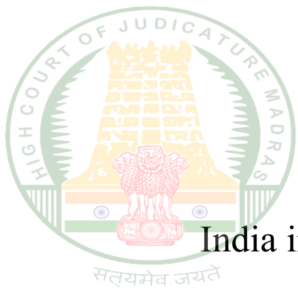

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India in ***State of Tamil Nadu and Another Vs. National South Indian River Interlinking Agriculturist Association***[62]**,** more specifically paragraph Nos.22, 26-29, 32, 33, which are extracted hereunder:-

> *"**22.** The State of Tamil Nadu in the counter filed before the High Court statesthat the classification was required since the small and marginal farmers suffer a greater degree of harm because of their limited capacity and aid. It is judicially recognized that the legislature is free to recognize degrees of harm and may confine its restrictions or benefits to those cases where the need is the clearest. In **State of Maharashtra v. Indian Hotel and Restaurants Association**[63]**,** Section 33-A(1) of the Bombay Police Act which prohibited dance performances in eating houses, permit rooms, or beer bars, and Section 33-B which allowed such dances in establishments with restricted entry or three starred or above hotels was under challenge. The State contended that the degree of harm in the class which is covered by Section 33 A(1) is greater. It was held by the two-Judge Bench that the State must have sufficient material to reach the conclusion or a general consensus is to be shared by the majority of the population to base its decisions on classification based on the degrees of harm. We are unable to accept that degrees of harm could*

[62] 2021 SCC Online SC 1114

[63] (2013) 8 SCC 519

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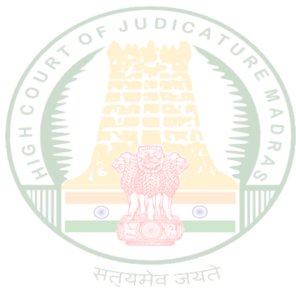
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be recognized based on the general consensus of the majority of the population. As held in Navtej Singh Johar(supra), the law or the scheme of the Government cannot be tested on the anvil of majoritarian morality but only on constitutional morality. However, the claims made by the State cannot be accepted without putting it to the test of reason through the submission of cogent material. A lesser degree of burden would substantially weaken the rights protection.

26. *In view of the discussion above, the application of the impugned scheme to only the small and the marginal farmers is justified for two reasons: (i) A climate crisis such as drought and flood causes large scale damages to small holdings as compared to the large holdings due to the absence of capital and technology; and (ii) The small and marginal farmers belong to the economically weaker section of society. Therefore, the loan waiver scheme in effect targets the economically weaker section of the rural population. The scheme is introduced with an endeavor to bring substantive equality in society by using affirmative action to uplift the socially and economically weaker sections. Due to the distinct degree of harm suffered by the small and marginal farmers as compared to other farmers, it is justifiable that the benefit of the scheme is only provided to a specified class as small and marginal farmers constitute a class in themselves. Therefore, the Percentage*

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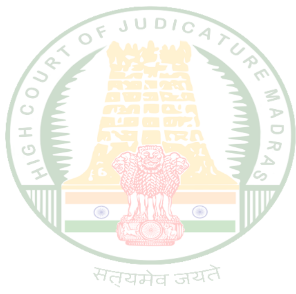
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Distribution of Indebted Agricultural classification based on the extent of landholding is not arbitrary since owing to the inherent disadvantaged status of the small and marginal farmers, the impact of climate change or other external forces is unequal.

27. *The High Court in the impugned judgment has observed that the scheme is both under-inclusive and over-inclusive since the total extent of land held by a person is calculated based on the information in the landholding register which permits discrepancies. It also held the scheme to be under-inclusive for not extending the benefit to 'other farmers' or the 'large farmers'. The meaning and ambit of under-inclusiveness and over-inclusiveness has been discussed in an erudite exposition by Justice K K Mathew, writing for a Constitution Bench in* ***State of Gujarat v. Ambica Mills***[64] *:-*

> *"**55.** A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the*

[64] (1974) 4 SCC 656

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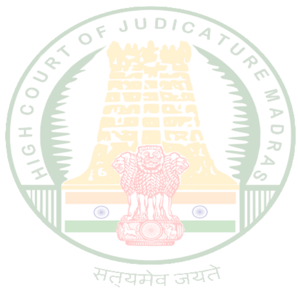
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same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification.

56. *Since the classification does not include all who are similarly situated with respect to the purpose of the law, the classification might appear, at first blush, to be unreasonable. But the Court has recognised the very real difficulties under which legislatures operate — difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to re-shape — and it has refused to strike down indiscriminately all legislation embodying classificatory inequality here under consideration. Mr.Justice*

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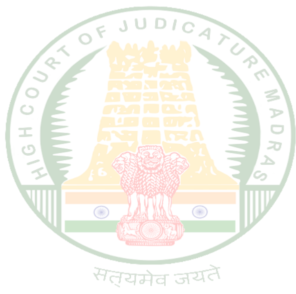
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> *Holmes, in urging tolerance of under-inclusive classifications, stated that such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched. [Missouri, K&T Rly v. May, 194 US 267, 269] What, then, are the fair reasons for non-extension? What should a court do when it is faced with a law making an under-inclusive classification in areas relating to economic and tax matters? Should it, by its judgment, force the legislature to choose between inaction or perfection?"*

28. *Ambica Mills (supra) justified under-inclusiveness on the grounds of recognition of degrees of harm, administrative convenience, and legislative experimentation. Reference was made to Justice Oliver Wendell Holmes's observation in* ***Missouri, K& T Rly v. May***[65]***,*** *that "legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched", to state that the judiciary must exercise self-restraint in such cases. In* ***NP Basheer v. State of Kerala***[66]***,***

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[65] 194 US 267 (1904), 269

[66] (2004) 2 SCR 224

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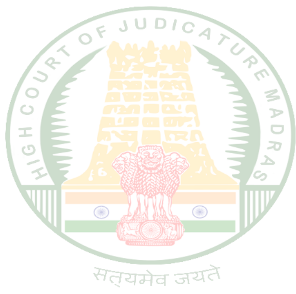
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a two Judge Bench of this Court held that if the extent of over-inclusiveness and under-inclusiveness is marginal, then it could not be held to be violative of Article 14 of the Constitution.

29. *The determination of whether the classification is under-inclusive is closely related to the test that is undertaken by the Court while determining the relationship of the means to the end. This Court follows the two-pronged test to determine if there has been a violation of Article 14. The test requires the court to determine if there is a rational nexus with the object sought to be achieved. Justice P N Bhagwati (as the learned Chief Justice then was) in* ***EP Royappa v. State of Tamil Nadu***[67]***,*** *held that arbitrariness of State action is sufficient to constitute a violation of Article 14. Thus, it came to be recognized that the equality doctrine as envisaged in the Constitution not only guarantees against comparative unreasonableness but also non-comparative unreasonableness (See Tarunabh Khaitan, 'Equality: Legislative Review under Article 14' in Sujit Choudhry, Madhav Khosla, Pratap Bhanu Mehta (eds), The Oxford Handbook of the Indian Constitution (Oxford University Press 2016)). This Court in* ***Modern Dental College and Research Centre v. State of MP***[68]*, invoked the proportionality test while testing the validity of*

[67] (1974) 4 SCC 3

[68] (2016) 7 SCC 353

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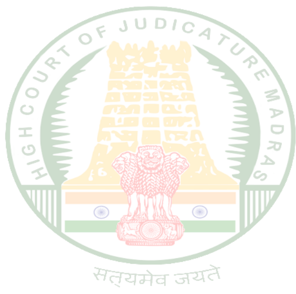
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the statute and rules that sought to regulate admission, fees and provided reservations for postgraduate courses in private educational institutions. In ***Subramanian Swamy v. Union of India***[69]*, the Court used the proportionality test to determine if the offence of criminal defamation prescribed under Sections 499 and 500 of the IPC violates the freedom of speech and expression under Section 19(1)(a). In* ***Justice Puttaswamy (9J) v. Union of India***[70]*, a nine judge Bench of this Court held that the right to privacy is a fundamental right. The proportionality standard was used in the context of determining the limits that could be imposed on the right to privacy. The Constitution Bench then dealt with the proportionality test in* ***Justice Puttaswamy (Retd.) v. Union of India***[71]***,*** *to determine if the Aadhar scheme violated the right to privacy of an individual. Our Courts have used the proportionality standard to determine non-classificatory arbitrariness, and have used the twin test to determine if the classification is arbitrary.*

32. *While non-classification arbitrariness is tested based on the proportionality test, where the means are required to be proportional to the object, classification arbitrariness is tested on the rational nexus test, where it is sufficient if the*

[69] (2016) 7 SCC 221

[70] (2017) 10 SCC 1

[71] (2019) 1 SCC 1

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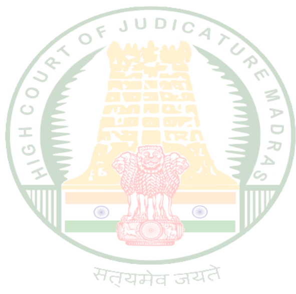
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means share a 'nexus' with the object. The degree of proof under the test would impact the judgment of this Court on whether the law is under-inclusive or over-inclusive. A statute is 'under-inclusive' if it fails to regulate all actors who are part of the problem. It is 'over-inclusive' if it regulates actors who are not a part of the problem that ***the statute seeks to address. The determination of under-inclusiveness and over-inclusiveness, and degree of deference to it is dependenton the relationship prong ('rational nexus' or 'proportional') of the test****.*

33. *The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a 'rational nexus' to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied.* ***A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision****. The Indian Courts do not apply the proportionality standard to classificatory provisions. Though the two-judge Bench in Anuj Garg (supra) articulated the proportionality standard for protective discrimination on the grounds in Article 15; and Justice Malhotra in Navtej Singh Johar (supra) held that less*

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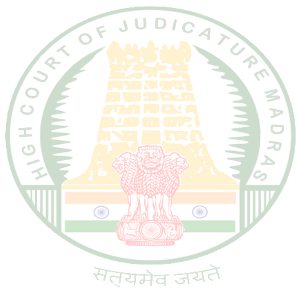
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> *deference must be allowed when the classification is based on the 'innate and core trait' of an individual, this is not the case to delve into it. Since the classification in the impugned scheme is based neither on the grounds in Article 15 nor on the 'innate and core trait' of an individual, it cannot be struck down on the alleged grounds of under-inclusiveness and over-inclusiveness.*"

11.10. Upon consideration of the material on record, firstly, we find that the arguments as to pre-conceived notion as unacceptable. Even though at the time of referring the matter to the Commission, specific reference was not made to the Aided Schools, nevertheless, the Commission has gone into the factors about the Aided Schools also. Once the report was laid, the Government has applied its mind and has taken a decision. Therefore, we do not see any pre-conceived notion in leaving out the aided schools.

11.11. As against the submission that the Aided Schools are similarly placed to that of the Government School students, it is

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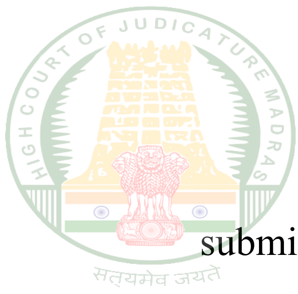
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submitted by the respondent State that even though Aided School students are also in a disadvantageous position, they are still better than that of the Government School and that they have taken the degree of harm and upon considering a scientific report of the Commission, they have not included the Aided Schools. The learned Senior Counsel sought to factually assail the report of the commission. This Court cannot step in and render factual findings as to the equality as if it is an Appellate authority and neither there is any wherewithal in the form of evidence nor it can make such an inquiry while exercising the jurisdiction of judicial review examining the constitutionality of the provisions and therefore, we are unable to accept the contention of the learned Counsel for the petitioners. Hence the ground of attack of the impugned legislation of discrimination fails and therefore, the Writ Petitions which attack the constitutionality of the impugned legislation on the ground of the non-inclusion of the Aided Schools are bound to

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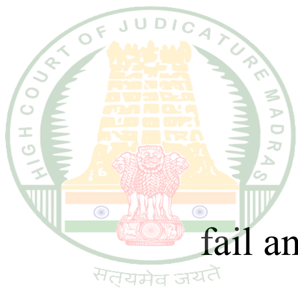
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fail and are dismissed accordingly.

12. Conclusion:

For all the reasons stated above, we uphold constitutional validity of The Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on preferential basis to students of Government Schools Act, 2020 (Act 34 of 2020) and all the Writ Petitions are dismissed, however, with a direction to the State Government to review the same in period of five years as recommended by the Commission and during the intervening period steps be taken to improve the standard of education imparted in the Government schools, so that the reservation may not further be extended beyond the period of five years. Consequently, W.M.Ps are closed. However there is no order as to costs.

(M.N.B., CJ.)

(D.B.C.J.)

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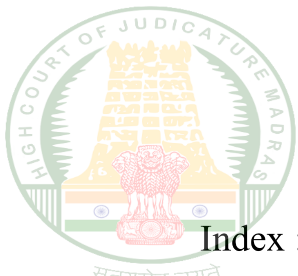
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Index : Yes
Speaking order
grs/klt

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, Fort St.George, Chennai – 600 009.

2.The Secretary to Government,
State of Tamil Nadu,
Department of Law,
Secretariat, Fort St.George, Chennai – 600 009.

3.The Director of Medical Education,
Directorate of Medical Education,
Department of Health and Family Welfare,
#162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.

4.The Secretary,
National Medical Commission,
Pocket -14, Sector – 8,
Dwarka Phase – 1,
New Delhi – 110 077.

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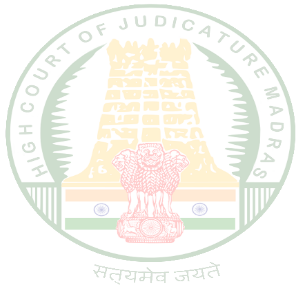
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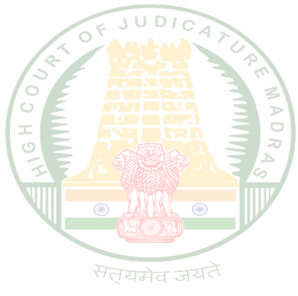
THE HON'BLE CHIEF JUSTICE

AND

D.BHARATHA CHAKRAVARHY, J.

grs/klt

W.P.No.20083 of 2020 batch etc.,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