THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

+ W.P.Nos.18047, 18216, 19210, 20676, 20880, 21008, 23100, 23101, 23102, 23103, 23104, 23105, 23106, 23107, 23108, 23109, 23110, 23112, 23198, 23199, 23200, 23267, 23361, 23362, 23363, 23364, 23369, 23374, 23378, 23382, 23390, 23412, 23444, 23454, 23472, 23487, 23509, 23511, 23513, 23617, 23631, 23667, 23679, 23719, 23734, 23772, 23774, 23825, 23840, 23859, 23894, 23908, 24052, 24062, 24066, 24121, 24122, 24128, 24179, 24190, 24285, 24372, 24379, 24461, 24491, 24746, 24755, 24798, 24825 and 24826 of 2023

% Date: 11.09.2023

Sanikommu Venkata Sai Bharath Reddy,
and others.

... Petitioners

v.

$ Union of India,
Represented by its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi-110011,
and others.

... Respondents

! Counsel for the petitioners: Mr. Anup Koushik Karavadi, Mr. P.Thirumala Rao, Ms. I.Mamu Vani, Mr. Srinivasa Rao Pachwa, Mr. Srinivasa Srikanth, Mr. Rajagopallavan Tayi, Mr. S.V.Ramana, Mr. Gudi Madhusudhan Reddy, Ms. Y.Ratna Prabha, Mr.Venkateswarlu Sanisetty, Mr. Palle Nageswar Rao, Mr. R.Yella Reddy, Mr. Basa Chanakya, Mr. Anirudh Sadhu, Mr.B.Srinarayana, Mr. C.M.R.Velu, Mr. Rama Rao Kochiri, Ms. S.Madhavi, Mr. Sk. Fakruddin Ali, Mr. P.Vengala Reddy, Mr. P.Shravan Kumar Goud, Mr. Satyanarayana Dharmapuri, Ms. G.Shilpa, Mr. Ch.Venkat Raman, Mr. Naresh Reddy Chinnolla and Mr. A.Durga Bhaskar

^ Counsel for the respondents : Mr. B.S.Prasad,
learned Advocate General

Mr. Gadi Praveen Kumar,
learned Deputy Solicitor General of India

Mr. A.Prabhakar Rao,
learned Standing Counsel for Kaloji Narayana Rao University of Health Sciences

Mr. N.Praveen Kumar,
learned Government Pleader for Medical, Health and Family Welfare

Mr. S.Vijay Prashanth,
learned Standing Counsel for Telangana Vaidya Vidhana Parishad (TVVP)

Ms. Gorantla Sri Ranga Pujitha, learned Standing Counsel for National Medical Commission

Mr. P.Govind Reddy, learned Special Counsel for the State of Andhra Pradesh,

Mr. C.Appaiah Sharma

< GIST:

➢ HEAD NOTE**:**

? CASES REFERRED:

1. (1984) 3 SCC 654
2. 2022 SCC OnLine SC 954
3. (1990) 2 SCC 259
4. 2023 SCC OnLine SC 535
5. AIR 1993 SC 477
6. (2021) 11 SCC 401
7. 2016 SCC OnLine Hyd 624
8. 2022 (2) ALD 658 (AP) (DB)
9. (1984) 3 SCC 706
10. (2016) 2 SCC 328
11. AIR 1963 SC 946
12. (2005) 2 SCC 217
13. (1985) 3 All.ER 300
14. (2005) 1 SCC 625
15. 2023 SCC Online SC 994
16. 1994) 5 SCC 509

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

Writ Petition Nos.18047, 18216, 19210, 20676, 20880, 21008, 23100, 23101, 23102, 23103, 23104, 23105, 23106, 23107, 23108, 23109, 23110, 23112, 23198, 23199, 23200, 23267, 23361, 23362, 23363, 23364, 23369, 23374, 23378, 23382, 23390, 23412, 23444, 23454, 23472, 23487, 23509, 23511, 23513, 23617, 23631, 23667, 23679, 23719, 23734, 23772, 23774, 23825, 23840, 23859, 23894, 23908, 24052, 24062, 24066, 24121, 24122, 24128, 24179, 24190, 24285, 24372, 24379, 24461, 24491, 24746, 24755, 24798, 24825 and 24826 of 2023

COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

The petitioners are local candidates of State of Andhra Pradesh and are aspirants seeking admission to MBBS/BDS Courses in the State of Telangana under the non-local category. In these petitions, the petitioners have impugned the validity of Rules (3)(II)(d), (e) (h) and Rule (3)(III)(a) which have been substituted vide G.O.Ms.No.72, dated 03.07.2023, in Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 (hereinafter referred to as 'the 2017 Rules'). In order

to appreciate petitioners' grievance, reference to few facts is necessary which are stated infra.

(i) FACTUAL MATRIX:

2. The factual matrix lies in a narrow compass. The Parliament enacted National Medical Commission Act, 2019. Under the Act, National Medical Council was constituted with effect from 25.09.1990. The National Testing Agency (NTA) issued a notification on 06.03.2023. In pursuance of the aforesaid notification, the petitioners as well as other candidates submitted their applications between 6th March, 2023 and 6th April, 2023 for appearing in National Eligibility-cum-Entrance Test undergraduate examination (hereinafter referred to as 'NEET UG'). NEET UG examination was held on 07.05.2023. The results of the said examination were declared on 13.06.2023. Thereafter, the Rules were amended on 03.07.2023 by which 100% reservation has been provided in respect of 85% of competent authority quota seats in favour of local candidates in educational institutions established after 02.06.2014 i.e., the date of formation of State of Telangana.

Thereafter, the University issued notification on 06.07.2023 inviting online applications for admission to MBBS/BDS courses in the State of Telangana.

3. In the aforesaid factual background, the challenge has been made to validity of Rules (3)(II) (d), (e), (h) and Rule (3)(III)(a) of the 2017 Rules which have been substituted, vide G.O.Ms.No.72, dated 03.07.2023.

(ii) ORDER OF HON'BLE SUPREME COURT:

4. It is relevant to mention herein that some of the petitioners in this batch of writ petitions had filed a writ petition under Article 32 of the Constitution of India which was registered as W.P (Civil) No.916 of 2023. The aforesaid writ petition was dismissed by Hon'ble Supreme Court dated 31.08.2023. The said order reads as under:

> "1. Heard learned counsel for the petitioners and the learned counsel for the intervenors/impleadors.
>
> 2. Learned counsels have not satisfied us as to the reason for filing the petition under Article 32 of the Constitution of India, particularly when the writ involving similar questions are pending before the High Court.

> 3. Learned counsels state that there is urgency in the matter. If that be so, we see no reason why the High Court would not take up the matter expeditiously to pass interim orders if the Court considers it appropriate and in accordance with law.
>
> 4. The writ petition and the applications for intervention/impleadment and direction are, accordingly, dismissed.
>
> 5. Pending application (s), if any, shall stand disposed of."

(iii) SUBMISSIONS ON BEHALF OF PETITIONERS:

5. Learned counsel for the petitioners in W.P.Nos.18216, 24746, 24755, 24798, 24825 and 24826 of 2023 has submitted that the 2017 Rules have been enacted under Sections 3 and 15 of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (hereinafter referred to as 'the 1983 Act'). It is further submitted that the amendment to the 2017 Rules results in violation of fundamental rights guaranteed to the petitioners under Articles 14, 15 and 16 of the Constitution of India, the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (hereinafter referred to as 'the

Presidential Order') and Section 95 of the Andhra Pradesh Reorganisation Act, 2014 (hereinafter referred to as 'the Reorganisation Act'). Therefore, the State Government has no power to amend the Rules. It is also urged that except for the Presidential Order, the State Government has no power to place restriction in the matter of admission to MBBS/BDS courses on the basis of place of birth/residence. It is also argued that the amendment to the 2017 Rules is in contravention of Article 13(2) of the Constitution of India. Therefore, the same is void. It is also urged that in view of the mandate contained in Article 16(3) of the Constitution of India, the State Government has no power to amend the Rules.

6. Alternatively, it is submitted that the prescription of 100% reservation for admission to MBBS/BDS courses in respect of local candidates of the State of Telangana is contrary to the decision of the Hon'ble Supreme Court in

Pradeep Jain v. Union of India[1] and **Satyajit Kumar v. State of Jharkhand**[2].

7. The attention of this Court has been invited to paragraphs 37 and 42 of the common order dated 29.08.2023 passed by a Division Bench of this Court in W.P.No.21268 of 2023 and it is submitted that the learned standing counsel for the University has argued in the said batch of writ petitions that the Presidential Order applies to admission to medical courses and is the basis for framing the 2017 Rules. It is contended that the amendment to the Rules is in violation of the Presidential Order and is therefore contrary to Article 371D of the Constitution of India. It is further submitted that the amendment is violative of Section 95 of the Reorganisation Act.

8. It is argued that after declaration of the results of NEET UG on 13.06.2023, the 2017 Rules have been amended which is not permissible, as the Rules of the

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[1] (1984) 3 SCC 654
[2] 2022 SCC OnLine SC 954

game cannot be changed midway. It is pointed out that Section 95 of the Reorganisation Act mandates the State Government to maintain quota for admission to educational institutions for a period of ten years. The petitioners, therefore, had legitimate expectation that the State Government would maintain the quota for admission to non-local candidates, in view of Section 95 of the Reorganisation Act. However, by amending the 2017 Rules, the legitimate expectation of the petitioners has been violated. Reliance has been placed on the decisions of the Hon'ble Supreme Court in **S.Prakasha Rao v. Commissioner of Commercial Taxes**[3] and in **Veena Vadini Teachers Training Institute v. State of Madhya Pradesh**[4].

9. Learned counsel for the petitioners in W.P.Nos.18047, 19210, 20880, 23101, 23102, 23103, 23104, 23105, 23106, 23107, 23108, 23109, 23110, 23198, 23199, 23200, 23267, 23361, 23362, 23363, 23364, 23369, 23374, 23378, 23382, 23390, 23412,

[3] (1990) 2 SCC 259
[4] 2023 SCC OnLine SC 535

23444, 23513, 24121, 24122, 24128 and 24379 of 2023 has adopted the submissions made by learned counsel for the petitioners in W.P.Nos.18216, 24746, 24755, 24798, 24825 and 24826 of 2023 and has submitted that G.O.Ms.No.72, dated 03.07.2023 insofar it pertains to Rule (3)(II)(h) of the 2017 Rules is in utter disregard to the principles laid down by the Hon'ble Supreme Court in **Indra Sawhney v. Union of India**[5] and in **Chebrolu Leela Prasad Rao v. State of Andhra Pradesh**[6]. It is further submitted that G.O.Ms.No.72, dated 03.07.2023 is restrictive in nature and imposes unreasonable restriction on the process of admission in medical UG courses in the State of Telangana. While referring to the decision of Hon'ble Supreme Court in **Chebrolu Leela Prasad Rao** (supra), it is contended that the Supreme Court has deprecated the conduct of the Government of Andhra Pradesh and Telangana in making reservations beyond permissible limits. It is urged that the reservations cannot be contrary to the Presidential Order.

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[5] AIR 1993 SC 477
[6] (2021) 11 SCC 401

10. Learned counsel for the petitioners in W.P.Nos.21008, 23198 and 23894 of 2023 has adopted the submissions made by learned counsel for the petitioners in W.P.Nos.18216, 24746, 24755, 24798, 24825 and 24826 of 2023 and has relied on decisions of Division Bench of this Court in **Phanindra Kumar Nagisetty v. NTR University of Health Sciences**[7] and **Dr. Sireesha Simhadri v. State of Andhra Pradesh**[8].

11. Learned counsel for the petitioners in W.P.Nos. 23100, 23112, 23454, 23617, 23679, 23719, 23734, 23825, 23840 and 23859 of 2023 has adopted the submissions made by learned counsel for the petitioners in W.P.Nos.18216, 24746, 24755, 24798, 24825 and 24826 of 2023.

(iv) SUBMISSIONS ON BEHALF OF STATE:

12. On the other hand, learned Advocate General, at the outset, clarified that under the amendment to the 2017

[7] 2016 SCC OnLine Hyd 624
[8] 2022 (2) ALD 658 (AP) (DB)

Rules which have been impugned in these writ petitions, 85% of competent authority quota seats alone have been reserved for local candidates for the State of Telangana and it is open for the petitioners as well as the candidates of other States and Union Territories to participate in 15% of All India Quota seats. The aforesaid 15% All India Quota remains intact notwithstanding the amendment in the Rules and the same cannot be taken away by the State Government.

13. It is submitted that amendment to the 2017 Rules was made on 03.07.2023. Thereafter, the University issued a notification on 06.07.2023 inviting applications for registration for counselling for admission to MBBS/BDS courses. Therefore, it is contended that on the facts of the case, the doctrine of legitimate expectation has no application. It is also urged that in any case, the candidates of other States and Union Territories cannot have legitimate expectation to seek reservation in the institutions which have been established after formation of the State of Telangana i.e., 02.06.2014.

14. It is argued that Section 95 of the Reorganisation Act only refers to the existing quota and the mandate contained in Section 95 of the Reorganisation Act has not been violated by the State of Telangana as the quota has been maintained in respect of the institutions as on 01.06.2014 in respect of 20 colleges which were in existence in the State of Telangana. It is argued that section 95 of the Reorganisation Act does not apply to the seats in the institutions which have come into existence after 02.06.2014. It is also urged that the word 'existing quota' used in Section 95 cannot have reference to future seats in educational institutions i.e., seats not in existence on 02.06.2014. Learned Advocate General while inviting the attention of this Court to Section 95 of the Reorganization Act, has contended that the Presidential Order applies to State of Andhra Pradesh as well as the State of Telangana.

15. It is argued that amendment in the 2017 Rules is in consonance with the Statement and Objects of the Reorganisation Act. It is contended that the amendment is

in consonance with paragraphs 5 and 6 of the Presidential Order. It is submitted that the petitioners have no right to seek admission against quota reserved for local candidates in respect of 34 medical colleges in the State of Telangana which have been established after 02.06.2014. It is further pointed out that out of the 34 colleges, 20 institutions are government institutions whereas 14 educational institutions are set up by private entities.

16. It is also argued that State of Telangana enjoys a special status under Article 371D of the Constitution and therefore, the decision of Hon'ble Supreme Court in **Pradeep Jain** (supra) does not apply to the fact situation of the case. In support of the aforesaid submission, reliance has been placed on the decision of the Hon'ble Supreme Court in **Reita Nirankani v. Union of India**[9] and **Sandeep v. Union of India**[10]. It is contended that under the Presidential Order in respect of institutions established after 02.06.2014, the State Government can prescribe reservation.

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[9] (1984) 3 SCC 706
[10] (2016) 2 SCC 328

(v) SUBMISSIONS ON BEHALF OF UNIVERSITY:

17. Learned Standing Counsel for the University in some of the writ petitions has contended that the intent and object of the Presidential Order is to provide equitable distribution of seats amongst local area and the petitioners are from the State of Andhra Pradesh. It is further submitted that similar reservation was provided by the State of Andhra Pradesh and the petitioners have availed of the benefit of reservation in their favour to the extent of 100% in the State of Andhra Pradesh. The petitioners now want the admission against the seats in medical colleges which are meant for local candidates of State of Telangana. It is reiterated that the law laid down in **Pradeep Jain** (supra) does not apply to the State of Telangana and the decision of Hon'ble Supreme Court in **Chebrolu Leela Prasad Rao** (supra) refers to employment in a scheduled area and does not apply to a case of educational institutions.

18. It is fairly submitted by the learned standing counsel for the University that if there is any discrepancy in the seat matrix, which has been published for admission to MBBS/BDS courses and the statement made by learned Advocate General with regard to the impact of the Rules, the seat matrix would be set right.

(vi) REJOINDER SUBMISSIONS ON BEHALF OF PETITIONERS:

19. Learned counsel for the petitioners, by way of rejoinder, submitted that the decision of the Hon'ble Supreme Court in **Sandeep** (supra) does not apply to the facts of the instant case and the contention made by learned Advocate General and learned standing counsel for University, that decision of Hon'ble Supreme Court in **Pradeep Jain** (supra) does not apply to the State of Telangana is incorrect. It is also argued that the provision under Section 95 of the Reorganization Act was made for a period of ten years. However, arrangement which was made after bifurcation of States, namely State of Telangana and the State of Andhra Pradesh has continued for a period of

nine years and no plausible explanation has been offered on behalf of the State Government, to change the same in the last year.

(vii) ANALYSIS:

20. We have considered the submissions made on both sides and perused the record.

ISSUES:

21. The issues which arise for consideration in these writ petitions can be summarised as under:

(i) *Whether the State Legislature is competent to amend the 2017 Rules?*

(ii) *Whether impugned amendment in the 2017 Rules is in violation of the Presidential Order, 1974 and therefore, void?*

(iii) *Whether impugned amendment in the 2017 Rules is repugnant to Article 371D of the Constitution of India and Section 95 of the Andhra Pradesh Reorganisation Act, 2014?*

(iv) *Whether the petitioners had a legitimate expectation under Section 95 of the Andhra Pradesh Reorganization Act, 2014 which had been violated by amendment of the 2017 Rules, on 03.07.2023?*

(v) *Whether rules of the game have been changed midway by way of amending the 2017 Rules, on 03.07.2023? and*

(vi) *Whether the reservation to the extent of 100% in favour of local candidates of the State of Telangana can be provided in respect of 85% of the competent authority quota seats in educational institutions set up after 02.06.2014 i.e., formation of State, by way of amendment in the 2017 Rules, and if yes, whether the same is permissible?*

22. We now proceed to deal with the issues *ad seriatim*.

Issue No. (i)

(i) Whether the State Legislature is competent to amend the 2017 Rules?

23. The State Legislature in exercise of powers conferred by Entry 25 of the Concurrent List to the Seventh Schedule

of the Constitution of India has enacted an Act, namely Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. Section 3 of the 1983 Act deals with regulation of admission into educational institutions. Section 3 enables the Government to frame Rules. Section 15 of the 1983 Act deals with powers of the State Government to make rules for carrying out the purposes of the Act. In exercise of powers under Section 3 read with Section 15(1) of the 1983 Act, the 2017 Rules have been framed.

24. From perusal of paragraph 3 of G.O.Ms.No.114, dated 05.07.2017 reads as under:

> NOTIFICATION
>
> 3. In exercise of the powers conferred by Section 3 read with sub-section (1) of Section 15 of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983), in supersession of the earlier rules regarding preparation of seat matrix and the selection procedure for admission into MBBS & BDS Courses in the Competent Authority quota, the Governor of Telangana hereby makes the rules for

preparation of seat matrix and the selection procedure for admission into MBBS & BDS Courses under the Competent Authority Quota:-

These Rules may be called the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017.

25. Thus, it is evident that the 2017 Rules have been framed under the 1983 Act. Section 15 of Telangana General Clauses Act, 1308 Fasli provides that power to make rules includes the power to add, vary or rescind. Therefore, the State Government has power to amend the 2017 Rules also. The validity of neither Section 3 nor Section 15 of the 1983 Act has been assailed by the petitioners in these petitions.

26. The relevant extract of Article 35 of the Constitution of India reads as under:

35. Legislation to give effect to the provisions of this Part- Notwithstanding anything in this Constitution,-

(a) Parliament shall have, and the legislature of a State shall not have, power to make laws-

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32,

> article 33 and article 34 may be provided for by law made by Parliament; and
>
> (ii) for prescribing punishment for those acts which are declared to be offences under this Part,
>
> And Parliament shall, as soon as may be after the commencement of this Constitution, makes laws for prescribing punishment for the acts referred to in sub-clause (ii)

27. Article 16 of the Constitution of India deals with equality of opportunity in the matters of public employment. Article 16(3) reads as under:

> **16. Equality of opportunity in matters of public employment.-** (1) xxx
>
> (2) xxx
>
> (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment.

28. Thus, perusal of Article 35(a) in conjunction with Article 16 makes it clear that Parliament is competent to make any law with regard to class or classes of employment or for appointment to an office under the

Government of, any local or other authority within a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment. Neither the 1983 Act nor the 2017 Rules or amendment thereof deal with employment or appointment to an office. Therefore, the contention that under Article 16(3) of the Constitution of India Parliament alone has power to make the impugned Rules and State Legislature has no competence to amend the 2017 Rules is misconceived. Therefore, the issue No.(i) is answered in the affirmative by stating that the State Legislature is competent to amend the 2017 Rules.

Issue No.(ii)

(ii) Whether impugned amendment in the 2017 Rules is in violation of the Presidential Order, 1974 and therefore, void?

29. In Rule (1)(v), the expression “competent authority seats” has been defined to mean as follows:-

(v) "Competent Authority Seats" means the seats earmarked from out of the sanctioned intake of seats in MBBS/BDS Courses in each College to be filled by the Committee for Admissions constituted by the Competent Authority."

30. Rule (3)(III) of the 2017 Rules deals with Rules of reservation for admission. Rule (3)(III)(1) reads as under:

Rule (3)(III) : Rules of Reservation for Admission (AREA)

Seats shall be reserved for the following categories in admissions to professional courses

(1) Region-wise reservation of seats:

(a) admission to 85% of the 'Competent Authority Seats' in each course shall be reserved for the local candidates and the remaining 15% of the 'Competent Authority seats shall be unreserved seats as specified in the Andhra Pradesh Educational Institutions (Regulations and Admissions) Order, 1974 subsequently amended.

(b) In respect of State side institutions, admission into 85% of seats in each course shall be reserved for the candidates belonging to three local areas in the State specified in this sub rule namely, Andhra University Area (Andhra), Osmania University Area (Telangana) and Sri Venkateswara University Area (Rayalaseema) in the ratio of 42:36:22 respectively and the balance of 15% seats shall be unreserved seats:

31. The 2017 Rules were amended by G.O.Ms.No.72, dated 03.07.2023, which reads as under:

AMENDMENT

In the said rules, in Rule 3,-

(1) In sub-rule-II,

(a) For clause (d) & (e), the following shall be substituted, namely,

"d) 85% of seats (competent authority quota) are reserved for local candidates in non-state wide institutions and 15% seats of competent authority quota are treated as un-reserved seats in colleges established prior to 2nd June, 2014".

"e) 15% of competent authority quota seats shall be unreserved in each college and reservation shall be maintained as far as possible for un-reserved seats on total seats available in colleges established prior to 2nd June, 2014".

(b) After existing clause (g), the following new clause shall be added namely:-

"h) In colleges established after 2nd June, 2014, 100% of seats under Competent Authority Quota are reserved for local candidates and all applicable reservations shall be implemented".

Rule 3(III)(a)

"(a) admission to 85% of the "Competent Authority Seats" in each course shall be reserved for the local candidates and the remaining 15% of the "Competent Authority Seats" shall be

> unreserved seats as specified in the Telangana Educational Institutions (Regulations and Admissions) Order, 1974 as amended from time to time, in the colleges established prior to 2nd June, 2014".

32. Thus, before proceeding further, it is apposite to take note of the stand taken by learned Advocate General which has been recorded by us in paragraph 12 of this order. Thus, in sum and substance, prior to amendment of the 2017 Rules on 03.07.2023, 85% of the competent authority quota seats were reserved for local candidates in non-statewide institutions, whereas 15% seats were treated as unreserved seats. Under the unamended Rules, 15% of the seats were unreserved in each college and it was directed that reservation shall be maintained as far as possible for unreserved seats on total seats available.

33. After the amendment, with effect from 03.07.2023, 85% of competent authority quota seats are reserved for local candidates in non-statewide institutions and 15% of competent authority quota seats are treated as unreserved in colleges established prior to 02.06.2014. Similarly, 15%

of competent authority quota seats are treated as unreserved in each college established prior to 02.06.2014.

34. It is pertinent to note that on 02.06.2014, there were 20 medical colleges in the State. The quota of 85% of competent authority quota seats and of 15% of competent authority quota seats i.e., All India Quota for admission to MBBS/BDS courses is maintained, even after amendment of the 2017 Rules as on 02.06.2014. In the State of Telangana, 34 educational institutions have been set up after 02.06.2014. After the amendment, 85% of competent authority quota seats had been reserved for local candidates, whereas candidates of remaining States of the country including the State of Andhra Pradesh as well as of the Union Territories can seek admission in MBBS/BDS course in respect of 15% quota of competent authority quota seats for admission to MBBS/BDS courses. Thus, it is evident that reservation to the extent of 100% has not been provided by amending the 2017 Rules.

35. In exercise of powers conferred by clauses (1) and (2) of Article 371D of the Constitution of India, President has

made an Order, namely Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. From perusal of Section 97 of the Reorganisation Act, it is evident that the Presidential Order applies to State of Telangana. Paragraph 2(1)(b), (e) and (f) which defines "local area", "statewide educational institution" and "statewide university" read as under:

> (b) "local area" in respect of any University or other educational institution means the local area specified in paragraph 3 of this Order for the purposes of admission to such University or other educational institution.
>
> (e) "State-wide educational institution" means an educational institution or a department of an educational institution specified in the Schedule to this Order.
>
> (f) "State-wide University" means the Andhra Pradesh Agricultural University constituted under the Andhra Pradesh Agricultural University Act, 1963 (Andhra Pradesh Act 24 of 1963), or the Jawaharlal Nehru Technological University constituted under the Jawaharlal Nehru Technological University Act, 1972 (Andhra Pradesh Act 16 of 1972) [or the Nizams Institute of Medical Sciences constituted under the Nizams Institute of Medical Sciences act, 1989 (A.P.Act No.13 of 1989)].

36. Paragraph 3 of the Presidential Order divides the State in three local areas namely, Osmania University Local Area (OU Area), Andhra University Local Area (AU Area) and Sri Venkateswara University Local Area (SVU Area).

37. Paragraphs 5 and 6 read as under:

> **5. Reservation in non-State-wide Universities and educational institutions:** (1) Admission to eighty-five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institutions (other than a State-wide University or a State-wide Educational Institution) will be subject to the control of the State Government shall be reserved in favour of the candidates in relation to the local area in respect of such University or other educational institution.
>
> (2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one: Provided that there shall be atleast one unreserved seat.
>
> **6. Reservation in State-wide Universities and State-wide Educational Institutions:-** (1) Admission to eighty-five percent of the available seats in every

course of study provided by a State-wide University or a State-wide educational institution shall be reserved in favour of local candidates and allocated among the local candidates in relation to the local areas specified in sub-paragraph (1), sub-paragraph (2) and sub-paragraph (3) of paragraph 3, in the ratio of 42:36:22 respectively.

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

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

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

Provided that there shall be atleast one seat allocated for the local candidates in respect of each local area.

38. Paragraph 5 of the Presidential Order provides that in case of non-statewide universities and educational institutions, out of the available seats, 85% of the seats

shall be reserved in favour of local candidates in relation to local area. Paragraph 6 provides that 85% of the available seats in every course of study provided by a state-wide university or a state-wide educational institution shall be reserved in favour of local candidates.

39. Thus, if paragraphs 5 and 6 of the Presidential Order and the amendment to the 2017 Rules is read together, it is evident that the amendment of the 2017 Rules is in consonance of the paragraphs 5 and 6 of the Presidential Order, as it provides reservation to the extent of 85% of the competent authority quota seats in favour of the local candidates. Therefore, the contention that the impugned amendment in the 2017 Rules is in contravention of the Presidential Order and is therefore void, is sans substance. Therefore, the issue (ii) is answered in the negative and it is held that the impugned amendment is not in violation of the Presidential Order and the same is not void.

Issue No.(iii)

(iii) Whether impugned amendment in the 2017 Rules is repugnant to Article 371D of the Constitution of India and Section 95 of the Andhra Pradesh Reorganisation Act, 2014?

40. Section 95 of the Reorganisation Act is reproduced below for the facility of reference:

> **95. Equal opportunities for quality higher education to all students:** In order to ensure equal opportunities for quality higher education to all students in the successor States, the existing admission quotas in all government or private, aided or unaided, institutions of higher, technical and medical education in so far as it is provided under Article 371D of the Constitution, shall continue as such for a period of ten years during which the existing common admission process shall continue.

41. It is salutary principle of interpretation of statute, that while interpreting it, effort should be made to give effect to each and every word used by the legislature. The Court should always presume that the legislature has inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have

effect. (See **State of Uttar Pradesh v. Dr. Vijay Anand Maharaj**[11]). The aforesaid principle of statutory interpretation was approved by a Constitution Bench of Hon'ble Supreme Court in **Nathi Devi v. Radhadevi Gupta**[12].

42. In Section 95 of the Reorganisation Act, the legislature has used the expression 'existing admission quotas'. Section 95 is clear and unambiguous. On plain and literal interpretation of Section 95, it is evident that the same mandates the successor states, namely State of Andhra Pradesh and State of Telangana to maintain 'existing admission quotas' in all government or private, aided or unaided, institutions of higher, technical and medical education for a period of ten years. The aforesaid provision refers to the quota in all the said institutions on the date of commencement of the Act, i.e., 02.06.2014, as Legislature has expressly referred to "existing admission quotas". Section 95 does not apply to seats in educational institutions which come into existence after 02.06.2014. By

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[11] AIR 1963 SC 946
[12] (2005) 2 SCC 217

amending the 2017 Rules the State Legislature has provided reservation in respect of 85% competent authority quota seats in respect of educational institutions which had been set up after 02.06.2014.

43. At this stage, we may take note of the relevant extract of Article 371D of the Constitution of India.

> **371D. Special provisions with respect to the State of Andhra Pradesh or the State of Telangana** -
>
> (1) The President may by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.
>
> (2) An order made under clause (1) may, in particular,—
>
> (a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area—

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made—

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

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

44. Thus, Article 371D provides for special provisions in respect of State of Telangana and the State of Andhra

Pradesh. In exercise of clauses (1) and (2) of Article 371D of the Constitution of India, the President has framed Presidential Order. While dealing with issue No.(ii), it has already been held that the same is in consonance with the Presidential Order. The amendment incorporated in the 2017 Rules is not in contravention with Article 371D of the Constitution of India as the same also makes a provision for local candidates in respect of 85% of the competent authority quota seats.

45. For the aforesaid mentioned reasons, the inevitable conclusion is that the amendment to 2017 Rules is neither violative of Section 95 of the Reorganisation Act, 2014 nor Article 371D of the Constitution of India. Accordingly issue No.(iii) is answered.

Issue No.(iv)

(iv) Whether the petitioners had a legitimate expectation under Section 95 of the Andhra Pradesh Reorganisation Act, 2014 which had

been violated by amendment of the 2017 Rules, on 03.07.2023?

46. Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority. It may also arise from existence of a regular practice which a claimant can reasonably expect to continue (See **R v. Secretary of Transport Exporte Greater London Council**[13]). In **Bannari Amman Sugars Ltd. v. Commercial Tax Officer**[14], the Hon'ble Supreme Court while dealing with the doctrine of legitimate expectation in paragraph 20 held as under:

> **20.** In ***Shrijee Sales Corpn.* v. *Union of India*** [(1997) 3 SCC 398] it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is

[13] (1985) 3 All.ER 300
[14] (2005) 1 SCC 625

> competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in ***Pawan Alloys and Casting (P) Ltd.* v. *U.P. SEB*** [(1997) 7 SCC 251 : AIR 1997 SC 3910] and in ***STO* v. *Shree Durga Oil Mills*** [(1998) 1 SCC 572] and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

47. A Constitution Bench of the Hon'ble Supreme Court in **Sivanandan C.T v. High Court of Kerala**[15] dealt with the doctrine of legitimate expectation. In paragraphs 18, 29, 41 and 60 of decision, it is held as under:

> **18.** The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognizes that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that

[15] 2023 SCC Online SC 994

public authorities, while performing their public duties, ought to honor their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure. (**Salemi v. Mackellar ([1977] HCA 26)**.

29. A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.

41. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a *bona fide* decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a

balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.

60. The following are our conclusions in view of the above discussions:

(i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;

(ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following : (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14;

(iii) A public authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest to frustrate a claim of legitimate expectation;

(iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.

(v) The High Court's decision to apply the minimum cut-off marks for the viva voce frustrates the substantive legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.

(vi) In terms of relief, we hold that it would be contrary to the public interest to direct the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.

48. Section 95 of the Reorganisation Act mandates that the successor states, namely State of Andhra Pradesh and State of Telangana to maintain 'existing admission quotas' in all government or private, aided or unaided, institutions of higher, technical and medical education for a period of ten years. The aforesaid provision refers to the quota in all the said institutions on the date of commencement of the Act, i.e., 02.06.2014, as legislature has expressly referred to "existing admission quotas". Section 95 does not apply to seats in educational institutions which come into

existence after 02.06.2014. By amending the 2017 Rules the State Legislature has provided reservation in respect of 85% competent authority quota seats in respect of seats in educational institutions which had been set up after 02.06.2014. Thus, the petitioners who are admittedly the local candidates of the State of Andhra Pradesh cannot have any legitimate expectation under Section 95 of the Reorganisation Act to claim a right in respect of seats which came into existence in 34 educational institutions set up in the State of Telangana after the formation of the State.

49. In **Madras City Wine Merchants' Association v. State of Tamil Nadu**[16], the Hon'ble Supreme Court in paragraph 52 held that doctrine of legitimate expectation applies only in the field of administrative law and it is not permissible to invoke the doctrine as against the legislation. Relevant extract of paragraph 52 reads as under:

> **52.** It was by a rule (subordinate legislation) in exercise of the powers conferred by Sections 17-C, 17-

[16] (1994) 5 SCC 509

> D, 21 and 54 of the Tamil Nadu Prohibition Act, 1937 licences under Bar Rules came to be granted. Those Rules have been repealed by exercise of the same powers under Sections 17-C, 17-D, 21 and 54 of the Prohibition Act. Therefore, this is a case of legislation. The doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility whatever of invoking the doctrine as against the legislation…

50. Therefore, in view of the aforesaid enunciation of law by Hon'ble Supreme Court, it is evident that the doctrine of legitimate expectation cannot be invoked against legislation. Therefore, the issue No.(iv) is answered by stating that the petitioners did not have any legitimate expectation under Section 95 of the Reorganisation Act and therefore, the question of its violation by amendment of the 2017 Rules does not arise.

Issue No.(v)

(v) Whether rules of the game have been changed midway by way of amending the 2017 Rules on 03.07.2023?

51. The National Testing Agency (NTA) issued a notification on 06.03.2023, in pursuance of which the petitioners as well as other candidates submitted their applications between 6th March, 2023 and 6th April, 2023 for appearing NEET UG examinations. The NEET UG examination was held on 07.05.2023. The results of the said examination were declared on 13.06.2023. On the basis of the aforesaid examination, the admissions were to be made to medical colleges situated in the State of Telangana as per the 2017 Rules. The aforesaid Rules were amended on 03.07.2023. Thereafter, the notification was issued on 06.07.2023 by the University inviting online application for admission to MBBS/BDS courses in the State of Telangana. Therefore, the amendment by way of Rules had been made prior to commencement of the process of admission to MBBS/BDS courses in the State of Telangana. Therefore, the contention that the rules of the game had been changed midway is misconceived in the facts of the case. Accordingly, the issue No.(v) is answered.

Issue No.(vi)

(vi) Whether the reservation to the extent of 100% in favour of local candidates of the State of Telangana can be provided in respect of 85% of the competent authority quota seats in educational institutions set up after 02.06.2014 i.e., formation of State, by way of amendment in the 2017 Rules, and if yes, whether the same is permissible?

52. In **Pradeep Jain** (supra), a three-Judge Bench of Hon'ble Supreme Court dealt with the question whether admission to a medical college or any other institution of higher learning situated in the State can be confined to those who have their domicile within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess domicile or residential qualification within the State irrespective of merit. The Hon'ble Supreme Court in

paragraph 20, which is extracted below for the facility of reference, held as under:

> **20.** The only question which remains to be considered is as to what should be the extent of reservation based on residence requirement and institutional preference. There can be no doubt that such reservation cannot completely exclude admission of students from other universities and States on the basis of merit judged in open competition. Krishna Iyer, J., rightly remarked in *Jagdish Saran case* [(1980) 2 SCC 768 : AIR 1980 SC 820 : (1980) 2 SCR 831] at pages 845 and 846 of the Report: (SCC p. 778, para 22)
>
> > "… reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. So, a certain percentage, which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some *dalit* talent, total sacrifice of excellence at the altar of equalisation — when the Constitution mandates for every one equality before and equal protection of the law — may be fatal folly, self-defeating

> educational technology and antinational if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit — such is the dynamics of social justice which animates the three egalitarian articles of the Constitution."
>
> We agree wholly with these observations made by the learned Judge and we unreservedly condemn *wholesale reservation* made by some of the State Governments on the basis of "domicile" or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution.

53. The aforesaid decision in **Pradeep Jain** (supra) was considered by another three-Judge Bench in **Reita Nirankari** (supra). The order passed in **Reita Nirankari** (supra) supra reads as under:

> 1. Some of the students seeking admission to the MBBS course in this academic year have made an application to this Court that the Judgment delivered on June 22, 1984 [Pradeep Jain v Union of India,

(1984) 3 SCC 654] in the medical admission cases may be given effect to only from the next academic year, because admissions have already been made in the medical colleges attached to some of the Universities in the country prior to the delivery of the Judgment on June 22, 1984 and moreover, some time would be required for the purpose of achieving uniformity in the procedure relating to admissions in the various Universities. We accordingly issued notice on the application to the learned advocates who had appeared on behalf of the various parties at the hearing of the main writ petitions as also to the Attorney General and after hearing them, we have come to the conclusion and this is accepted by all parties that in view of the fact that all formalities for admission, including the holding of entrance examination, have been completed in some of the States prior to the Judgment dated June 22, 1984 and also since some time would be required for making the necessary preparations for implementing the judgment, it is not practicable to give effect to the judgment from the present academic year and in fact compelling some States to give effect to the Judgment from the present academic year when others have not, would result in producing inequality and if all the States were to be required to implement the judgment immediately, admissions already made would have to be cancelled and fresh entrance examinations would have to be held and this would require at least 2 or 2½ months delaying the commencement of the academic term apart from causing immense hardship to the students. We therefore direct that the judgment

> shall be implemented with effect from the next academic year 1985-86. Whatever admissions, provisional or otherwise, have been made for the academic year 1984-85, shall not be disturbed on the basis of the judgment. We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu and Kashmir because at the time of hearing of the main writ petitions, it was pointed out to us by the learned advocates appearing on behalf of those States that there were special constitutional provisions in regard to them which would need independent consideration by this Court.
>
> 2. This order will form part of the main judgment delivered on June 22, 1984.

54. Hon'ble Supreme Court in **Sandeep** (supra) in a petition filed by the petitioners under Article 32 of the Constitution of India dealt with the question whether the primary eligibility criteria for appearing in super speciality entrance examination in the States like Andhra Pradesh, Telangana and Tamil Nadu can be confined only to the candidates having their domicile in other States. In paragraphs 19 and 20 of the aforesaid judgment, the Hon'ble Supreme Court referred to decision in **Reita Nirankari** (supra) and held as under:

> 1**9.** After the said judgment was delivered, the said three-Judge Bench passed a clarificatory order

in *Reita Nirankari* [*Reita Nirankari* v. *Union of India*, (1984) 3 SCC 706] wherein the Court considered three aspects, one of which is relevant for the present case. We reproduce the same: (SCC pp. 707-708, para 1)

> "*1*. … We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu and Kashmir because at the time of hearing of the main writ petitions, it was pointed out to us by the learned advocates appearing on behalf of those States that there were special constitutional provisions in regard to them which would need independent consideration by this Court."

The aforesaid clarificatory order has its own significance, for it undeniably excludes the applicability of the domicile test stated in *Pradeep Jain* [*Pradeep Jain* v. *Union of India*, (1984) 3 SCC 654] in respect of the State of Andhra Pradesh.

20. At this stage, it would be appropriate to refer to *C. Surekha* [*C. Surekha* v. *Union of India*, (1988) 4 SCC 526]. The said case arose from Osmania University in Andhra Pradesh. The petitioner therein had passed from the said University and he intended to take the All India Entrance Examination for admission to PG medical course in 1988. He had challenged the constitutional validity of Articles 371-D(2)(*b*)(*iii*) and (*c*)(*ii*) of the Constitution as well as the Presidential Order as a consequence of which the students of Andhra Pradesh have been excluded for competing in the aforesaid examination. The two-

Judge Bench referred to the decisions in *Pradeep Jain* [*Pradeep Jain* v. *Union of India*, (1984) 3 SCC 654] and *Reita Nirankari* [*Reita Nirankari* v. *Union of India*, (1984) 3 SCC 706] and noted the stand of the Union of India and Andhra Pradesh in their respective counter-affidavits that had asserted that institutions in the State of Andhra Pradesh were kept out from the purview of the scheme in view of the decision rendered in *Pradeep Jain* [*Pradeep Jain* v. *Union of India*, (1984) 3 SCC 654] . The Court also took note of the fact that the issue was kept open in *Reita Nirankari* [*Reita Nirankari* v. *Union of India*, (1984) 3 SCC 706] , and referred to the pronouncements in *P. Sambamurthy* v. *State of A.P.* [*P. Sambamurthy* v. *State of A.P.*, (1987) 1 SCC 362 : (1987) 2 ATC 502] , *Minerva Mills Ltd.* v. *Union of India* [*Minerva Mills Ltd.* v. *Union of India*, (1980) 3 SCC 625] , *S.P. Sampath Kumar* v. *Union of India* [*S.P. Sampath Kumar* v. *Union of India*, (1985) 4 SCC 458 : 1985 SCC (L&S) 986] and reiterated the principle that Article 371-D(3) was valid because clause (10) of Article 371-D provides as follows: (*C. Surekha case* [*C. Surekha* v. *Union of India*, (1988) 4 SCC 526] , SCC p. 531, para 4)

> "*4.* …'**371-D. (3)** The provisions of this Article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.'"

55. Thereafter, in paragraphs 36 and 37, it was held as under:

> **36.** We have referred to the aforesaid judgments in extenso as the learned counsel appearing for the petitioners have laid immense emphasis that there cannot be reservation of any kind in respect of postgraduate or super speciality courses regard being had to the law laid down by many a judgment of this Court. It is urged that the State of Andhra Pradesh and Telangana cannot apply the domicile test only to admit its own students and that too also in respect of 15% quota meant for non-local candidates. We have already analysed the factual score and the legal position. The undivided State of Andhra Pradesh enjoys a special privilege granted to it under Article 371-D of the Constitution and the Presidential Order. The judgments of the larger Bench do not refer to the said Article nor do they refer to the Presidential Order, for the said issue did not arise in the said cases. A scheme has been laid down in *Pradeep Jain* [*Pradeep Jain* v. *Union of India*, (1984) 3 SCC 654] and the concept of percentage had undergone certain changes. In *Reita Nirankari* [*Reita Nirankari* v. *Union of India*, (1984) 3 SCC 706] , the same three-Judge Bench clarified the position which we have already reproduced hereinbefore. However, in *C. Surekha* [*C. Surekha* v. *Union of India*, (1988) 4 SCC 526] , the Court had expressed its view about the amendment of the Presidential Order regard being had to the passage of time and the advancement in the State of Andhra Pradesh. It has been vehemently

urged by Mr Marlapalle that despite 27 years having been elapsed, the situation remains the same. We take note of the said submission and we are also inclined to echo the observation that was made in *Fazal Ghafoor* [*Fazal Ghafoor* v. *Union of India*, 1988 Supp SCC 794 : 1 SCEC 356] wherein it has been stated thus: (SCC p. 795, para 2)

> "*2.* … In *Pradeep Jain case* [*Pradeep Jain* v. *Union of India*, (1984) 3 SCC 654] this Court has observed that in superspecialities there should really be no reservation. This is so in the general interest of the country and for improving the standard of higher education and thereby improving the quality of available medical services to the people of India. We hope and trust that the Government of India and the State Governments shall seriously consider this aspect of the matter without delay and appropriate guidelines shall be evolved by the Indian Medical Council so as to keep the superspecialities in medical education unreserved, open and free."

37. The fond hope has remained in the sphere of hope though there has been a progressive change. The said privilege remains unchanged, as if to compete with eternity. Therefore, we echo the same feeling and reiterate the aspirations of others so that authorities can objectively assess and approach the situation so

> that the national interest can become paramount. We do not intend to add anything in this regard.

56. Thus, on perusal of the order passed by Hon'ble Supreme Court in **Reita Nirankari** (supra) and relevant paragraphs of paragraphs 19, 20, 36 and 37 of the decision of Hon'ble Supreme Court in **Sandeep** (supra), it is evident that the ratio laid down by the Hon'ble Supreme Court in **Pradeep Jain** (supra) does not apply to the State of Telangana.

57. Now we may advert to the decision of the Hon'ble Supreme Court in **Chebrolu Leela Prasad Rao** (supra). The Hon'ble Supreme Court dealt with the validity of G.O.Ms. No.3, dated 10.01.2000 issued by erstwhile State of Andhra Pradesh which prescribed 100% reservation to the Scheduled Tribe candidates, out of whom 33.1/3% shall be women for the post of teachers in the school in the scheduled areas in the State of Andhra Pradesh. The questions which were answered by Hon'ble Supreme Court were quoted in paragraph 2 of the judgment, which is reproduced below:

> **2.** Several questions have been referred for consideration in the order dated 11-1-2016 [*Chebrolu Leela Prasad Rao* v. *State of A.P.*, (2021) 11 SCC 526] . We have renumbered Questions 1(*a*), (*b*), (*c*) and (*d*) based on interconnection. The questions are as follows : (*Chebrolu Leela Prasad Rao case* [*Chebrolu Leela Prasad Rao* v. *State of A.P.*, (2021) 11 SCC 526] , SCC p. 527, para 1)
>
> (*1*) What is the scope of Para 5(1), Schedule V to the Constitution of India?
>
> (*a*) Does the provision empower the Governor to make a new law?
>
> (*b*) Does the power extend to subordinate legislation?
>
> (*c*) Can the exercise of the power conferred therein override fundamental rights guaranteed under Part III?
>
> (*d*) Does the exercise of such power override any parallel exercise of power by the President under Article 371-D?
>
> (*2*) Whether 100% reservation is permissible under the Constitution?
>
> (*3*) Whether the notification merely contemplates a classification under Article 16(1) and not reservation under Article 16(4)?
>
> (*4*) Whether the conditions of eligibility (i.e. origin and cut-off date) to avail the benefit of reservation in the notification are reasonable?

58. Reliance has been placed by learned counsel for the petitioners on answer given by Hon'ble Supreme Court to

question No.2 in paragraphs 145 and 146, which read as under:

> **145.** A reservation that is permissible by protective mode, by making it 100% would become discriminatory and impermissible. The opportunity of public employment cannot be denied unjustly to the incumbents, and it is not the prerogative of few. The citizens have equal rights, and the total exclusion of others by creating an opportunity for one class is not contemplated by the Founding Fathers of the Constitution of India. Equality of opportunity and pursuit of choice under Article 51-A cannot be deprived of unjustly and arbitrarily. As per the Presidential Order, the citizens of the locality and outsiders were entitled to 15% of employment in the district cadre in terms of clause (10) of Article 370(1)(*d*) of the Constitution. Thus, the G.O. does not classify but deals with reservations. It was contrary to the report sent to the President by the Governor, which indicated even the posts which were reserved for Scheduled Tribes Teachers, they were not available as such Tribes Advisory Council decided to fill them from other non-local tribals.
>
> **146.** We find that GOMs No. 3 of 2000 is wholly impermissible and cannot be said to be legally permissible and constitutionally valid. It can be said that action is not only irrational, but it violates the rights guaranteed under Part III of the Constitution and is not sustainable.

59. Now we may advert to the decision of the Hon'ble Supreme Court in **Satyajit Kumar** (supra). In the aforesaid decision, the Hon'ble Supreme Court dealt with the validity of advertisement dated 28.12.2016 issued by Department of Personnel and Administrative Reforms and Raj Basha of Government of Jharkhand, inviting applications for appointment to the post of trained graduate teachers in government secondary schools to the extent of 100% reservation for the local candidates/ residents of thirteen scheduled areas in the State of Jharkhand. The Hon'ble Supreme Court in paragraphs 99 and 100 held as under:

> **99.** Even under Article 16(3) of the Constitution of India, it is the Parliament alone, which is authorized to make any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State of Union Territory, any requirement as to residence within the State or Union territory prior to such employment or appointment. As per Article 35 of the Constitution of India, notwithstanding anything contained in the Constitution, the Parliament shall have and the Legislature of a State shall not have the power to make laws with respect to any of the matters which, under clause (3) of Article 16 may be provided for law made by Parliament. Therefore, impugned

> Notification/Order making 100% reservation for the local resident of the concerned Scheduled Area/Districts (reservation on the basis of resident) is ultra vires to Article 35 r/w Article 16(3) of the Constitution of India.
>
> **100.** Applying the law laid down by this Court in the case of *Chebrolu Leela Prasad Rao* (supra) and in view of the above discussion and for the reasons stated above, the High Court has not committed any error in concluding and holding that the Notification No. 5938 and Order No. 5939 dated 14.7.2016 issued by the State Government providing 100% reservation for the local residents of concerned Scheduled Districts/Areas as being unconstitutional and ultra vires Articles 14, 13(2), 15 and 16(2) of the Constitution of India. It is rightly observed and held that said Notification and Order would also violate Articles 16(3) and 35(a-i) of the Constitution of India. The High Court has also rightly observed and held that aforesaid Notification and Order is ultra vires to paragraph 5(1) of the Fifth Schedule of the Constitution of India. We are in complete agreement with the view taken by the High Court.

60. The decision of Hon'ble Supreme Court in **Pradeep Jain** (supra) does not apply to the State of Telangana, as clarified by Hon'ble Supreme Court itself in **Reita Nirankari** (supra) and **Sandeep** (supra). The decisions of Hon'ble Supreme Court in **Chebrolu Leela Prasad Rao**

(supra) and **Satyajit Kumar** (supra) are authorities for the proposition that 100% reservation in matter of employment is violative of the constitutional guarantee contained in Article 16 of the Constitution of India. However, we may reiterate that instant case is not a case of 100% reservation as only 85% of competent authority quota seats in respect of educational institutions which have been set up after formation of the State, i.e., 02.06.2014 had been reserved for the candidates of State of Telangana. Therefore, the decisions of Hon'ble Supreme Court in **Chebrolu Leela Prasad Rao** (supra) and **Satyajit Kumar** (supra) have no application to the facts of these cases.

61. Therefore, the issue No.(vi) is answered by stating that reservation to the extent of 100% in favour of local candidates in the Sate of Telangana by way of amendment to the 2017 Rules had not been provided.

62. However, in view of submission made by learned Advocate General and learned standing counsel for the University that 85% of competent authority quota seats alone had been reserved for local candidates for the State

of Telangana in respect of institutions set up after formation of the State i.e., 02.06.2014 and it is permissible for the students of other States including the State of Andhra Pradesh to participate in 15% of competent authority quota seats, it is directed that the aforesaid provision, if not already made, shall be made in the seat matrix notified by the University.

63. In view of preceding analysis, we do not find any merit in these writ petitions. In the result, the same fail and are accordingly dismissed.

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ALOK ARADHE, CJ

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N.V.SHRAVAN KUMAR, J

11.09.2023
Pln

Note: LR copy be marked.
(By order)
pln