
(1989) 12 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9470 of 1988 and W.P.M.P. No. 1198 of 1989

B. Ramesh

APPELLANT

Vs

University of Health Sciences, Vijayawada and others

RESPONDENT

Date of Decision : 06-12-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 35, 368, 371
State of Andhra Pradesh Parliament enacted Public Employment (Requirement as to Residence) Act, 1957 — Section 3

Citation : AIR 1991 AP 1

Hon'ble Judges : Syed Shah Mohammed Quadri, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : G. Raghuram, for the Appellant; A. Gopal Rao and K. Jagannadha Rao, Standing Counsels, Advocate General and Govt. Pleader, for Education and P. Gangarami Reddy, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.

1. The petitioner, who is an aspirant for admission to M.Ch. Genito Urinary Surgery Speciality (2nd Post Graduate Course) for the academic year 1987-88, challenges the validity of Art. 371D of the Constitution of India and the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 made by the President under Clause (1) of Art. 371D (for short, the Presidential Order).

2. A learned single Judge of this Court referred the writ petition to a Division Bench in view of the importance of the questions raised in the writ petition. That is how this writ petition has come up for hearing before us.

3. Since we are concerned here with Constitutional validity of Art. 371D which is a special provision for the State of Andhra Pradesh and which was inserted by Parliament to give effect to what is commonly known as six point formula, it would be apposite to extract Article 371D of the Constitution here.

"Special provisions with respect to the State of Andhra Pradesh :--

(1) The President may by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, 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 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.

(3) The President may, by order, provide for the Constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority including any jurisdictional power and authority which immediately before the commencement of the Constitution (Thirty Second Amendment) Act, 1973, was exercisable by any Court other than the Supreme Court or by any tribunal or other authority as may be specified in the order with respect to the following matters, namely:--

(a) appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State,

or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(b) seniority of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;

(c) such other conditions of service of persons appointed, allotted or promoted to such class or classes of posts in any civil service of the State or to such class or classes of civil posts under the State or to such class or classes of posts under the control of any local authority within the State, as may be specified in the Order,

(4) An order made under Clause (3) may-

(a) authorise the Administrative Tribunal to receive representations for the redress of grievances relating to any matter within its jurisdiction as the President may specify in the order and to make such orders thereon as the Administrative Tribunal deems fit;

(b) contain such provisions with respect to the powers and authorities and procedure of the Administrative Tribunal including provisions with respect to the powers of the Administrative Tribunal, to punish for contempt of itself, as the President may deem necessary;

(c) provide for the transfer to the Administrative Tribunal of such classes of proceedings, being proceedings relating to matters within its jurisdiction and pending before any Court other than the Supreme Court or tribunal or other authority immediately before the commencement of such order, as may be specified in the order;

(d) contain such supplemental, incidental, and consequential provisions including provisions as to fees and as to limitation, evidence or for the application of any law for the time being in force subject to any exceptions or modifications as the President may deem necessary.

(5) The order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier;

Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be.

(6) Every special order made by the State Government under the proviso to Clause (5) shall be laid as soon as may be after it is made, before both Houses of the State Legislature.

(7) The High Court for the State shall not have any powers of superintendence over the Administrative Tribunal and no Court other than the Supreme Court or tribunal shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of, or in relation to, the Administrative Tribunal.

(8) If the President is satisfied that the continued existence of the Administrative Tribunal is not necessary, the President may by order abolish the Administrative Tribunal and make such provisions in such order as he may deem fit for the transfer and disposal of cases pending before the Tribunal immediately before such abolition.

(9) Notwithstanding any judgment, decree or order of any Court, tribunal or other authority-

(a) no appointment, posting, promotion or transfer of any person-

(i) made before the 1st day of November, 1956 to any post under the Government of, or any local authority within, the State of Hyderabad as it existed before that date, or

(ii) made before the commencement of the Constitution (Thirty Second Amendment) Act, 1973, to any post under the Government of, or any local or other authority within, the State of Andhra Pradesh; and

(b) no action taken or thing done by or before any person referred to in sub-clause (a), shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that the appointment, posting, promotion or transfer of such person was not made in accordance with any law, then in force, providing for any recruitment as to residence within the State of Hyderabad or, as the case may be, within any part of the State of Andhra Pradesh, in respect of such appointment, posting, promotion or transfer.

(10) 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."

4. Clause (1) of Art. 371D confers power on the President to provide by an order with respect to the State of Andhra Pradesh having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education with discretion to make different provisions for various parts of the State. Clause (2) provides that any order made under Clause (1) may specify any part or parts of the State which shall be regarded as the local area for the purpose of admission to any University within the State or to any other educational institution which is subject to the control of the State Government or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of University or other educational institutions as the case may be. Clauses (3) to (6) deal with the

establishment of an Administrative Tribunal for the redress of any grievance relating to any matter of the civil service and the orders made by it. Clause (7) puts an embargo on the jurisdiction of the High Court and all other Courts except the Supreme Court in respect of matters within the jurisdiction, power or authority of the Administrative Tribunal. Clause (8) provides that if the President is satisfied that the continued existence of the Administrative Tribunal is not necessary, he may by order abolish the Administrative Tribunal and make such provisions as he may deem fit for the transfer and disposal of cases pending before the Tribunal immediately before such abolition. We may notice here that with effect from 1st November, 1989 the President has abolished the Andhra Pradesh Administrative Tribunal which was constituted under Clause (3). Clause (9) validates certain appointments, postings and promotions. Clause (10) gives overriding effect to the provisions of Art. 371D and any order made by the President thereunder, on any other law for the time being in force and on other provisions of the Constitution. 5. In exercise of the power conferred under Clause (1) of Article 371D of the Constitution, the President made the A. P. Educational Institutions (Regulation of Admissions) Order, 1974, in short, the Presidential Order. The salient features of the Presidential Order are that it divides the State into three areas -- Andhra University and Nagarjuna University area (for short A. U. area) Osmania University, Kakatiya University area (for short O. U. area) and Sri Venkateswara University area (for short S.V.U. area). It defines "local candidates" for each area. It classifies Universities and Educational Institutions into two categories non-Statewide and Statewide, Para 5 of the Order provides that admissions to eighty-five per cent of the available seats in every course of study provided by Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by way any other educational institution other than a Statewide University or a Statewide educational institution which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution. Para 6 which deals with Statewide Universities and Statewide educational institutions, provides that admissions to eighty five per cent of the available seats in every course of study provided by a Statewide University or a Statewide educational institution shall be reserved in favour of and allocated among the local candidates in relation to the local areas specified in sub-paras (1) to (3) of paragraph 3 in the ratio of 42:36:22 respectively. Paragraph 8 says that the President may, by order, require the State Government to issue such directions as may be necessary or expedient for the purpose of giving effect to this Order to any University or to any other educational institution subject to the control of the State Government and the University or other educational institution shall comply with such direction. Sub-para. (2) of Paragraph 8 empowers the State Government to issue directions for satisfying itself that any directions issued under sub-paragraph (1) have been complied with. Paragraph 9 gives overriding effect to the provisions of the Order issued by the President. The Schedule to the Presidential Order contains the list of Statewide Educational Institutions subject to the control of the

State Government, which has been amended from time to time by adding different courses to it.

6. For the year 1987-88 the University of Health Sciences called for applications for admission to 2nd Post-Graduate Course (Super specialities in various subjects). The dispute in this writ petition relates to admission to M.Ch. Genito Urinary Surgery. The eligibility for applying the said course is M.S. General Surgery or M.D. Obstetrics and Gynaecology. It may be noted here that there are three seats in the State -- two in Osmania Medical College (OMC) Hyderabad and one in Andhra Medical College (AMC) Visakhapatnam. Four candidates applied for admission to the said course whose rank on the basis of marks obtained in the entrance test is as under:

Marks 1. Dr. Subbarao 88/100 2. Dr. Muralikrishna 87/100 3. Dr. B. Ramesh 86/100 4. Dr. Madhukar 83/100 Candidates at serial Nos. 1 and 2 were admitted to the said course. The petitioner who did his M.B.B.S. (First Degree) from Andhra University and M. S. General Surgery from All India Institute of Medical Sciences, New Delhi, and who ranks third in the merit list challenged the admission of the 4th respondent initially on the ground that the allotment of seats region wise was illegal, arbitrary and mala fide as, according to him, the admissions should have been made on the basis of merit and not on the basis of region. Later, he amended the prayer in the writ petition and sought a declaration that Art. 371D of the Constitution of India is violative of the basic structure of the Constitution or alternatively to declare that the non-exclusion of the Super Speciality Second Post Graduate Discipline of M.Ch. (Genito-Urinary Surgery) from the purview of the A. P. Educational Institutions (Regulation of Admissions) Order, 1974 is violative of Article 371D of the Constitution of India and ultra vires the powers of President of India under the said Article.

7. The Registrar of the University of Health Sciences filed counter-affidavit for the University. He states that three seats are available in the said course -- two in Osmania University Medical College, Hyderabad and one in Andhra Medical College, Vizag -- and that the said course is not a Statewide course. It is also stated that the procedure prescribed in Annexure III to G.O.P. No. 646 Education dated 16-7-1979 has to be followed, that as per sub-clause (2) of the said G.O. 85 per cent of the available seats have to be reserved for local candidates and that one seat out of two seats in Osmania University Medical College and one seat in Andhra Medical College, Visakhapatnam were treated as unreserved to which candidates belonging to all the regions can compete. It is denied that there has been any allocation of seats regionwise. It is stated that according to the marks obtained by the candidates two unreserved seats have been allotted on the basis of merit and one reserved seat in Osmania Medical College has been allotted to a local candidate. The petitioner could not secure admission to the course on the basis of his merit and is claiming a seat on regional basis which is not permissible.

8. Sri Raghuram, the learned counsel for the petitioner, submits that the aim and

object of enacting Article 371D is to provide equal opportunity to the candidates of different local areas of the State for whom 85 per cent of the available seats are reserved; in so far as 15 per cent unreserved seats are concerned, they should be thrown open to the candidates of other States but non-locals as defined in the Presidential Order are alone entitled to compete for them. The consequence of not making the unreserved 15% seats available to all the eligible candidates including those of the other States, according to the learned counsel, is that candidates of our State are unable to compete and secure admission in other States. Therefore para 11 of G.O.P. 646 dt. 10-7-1979 has to be declared ultra vires Art. 371D, the Presidential Order and also violative of Articles 14 and 16 of the Constitution.

9. In our view this contention cannot be accepted first because the question does not arise on the facts of this case as the petitioner was not excluded from consideration for admission to the course of M.Ch. on criteria laid down in para 11 of G.O.P. 646 (in fact he was treated as eligible non-local and was permitted to compete but he did not come up on merit) and secondly because Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, which laid down scheme of admission to medical courses on all India basis is not applicable to the State of Andhra Pradesh. In Pradeep Jain v. Union of India, the Supreme Court laid down that reservation on the basis of residence requirement within the State and institutional preference should not exceed seventy per cent of open general seats and declared the wholesale reservation on aforesaid grounds, as violative of Article 14 of the Constitution. It also observed that there should be no reservation in super specialities. The Supreme Court directed that in any event 30 per cent of the open seats shall be available for admission of students on all India basis irrespective of the State or University from which they come and such admissions shall be granted purely on merit on the basis of either all India Entrance Examination or Entrance Examination to be held by the State. When Art. 371D was brought to the notice of their Lordships of the Supreme Court in Reita Nirankari Vs. Union of India and Others, it was observed:

"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 advocate appearing on behalf of those States that there were special Constitutional provisions in regard to them which would need independent consideration by this Court."

Therefore, the contention of the learned counsel that having regard to the decision of the Supreme Court in Pradeep Jain v. Union of India not providing 15 percent of seats for admission on all India basis is illegal and unconstitutional cannot be accepted.

10. It is true that the contention that candidates other than those falling under para 11 of G.O.P. 646 are eligible as against 15% seats was rejected by a Division Bench of this Court in *State of Andhra Pradesh and Another Vs. Kannan Narayan*, but this does not affect the rights of the petitioner as his entitlement to compete for 15% unreserved seats is not disputed by the University.

11. We shall now take up the second contention of the learned counsel for the petitioner that Article 371D is violative of the basic structure of the Constitution.

12. The historical background in which this Article came to be enacted by the Parliament is summarised by the Supreme Court in *P. Sambamurthy v. State of Andhra Pradesh*, AIR 1987 SC 663 and we would better to reproduce the same here:

"Article 371D was introduced in the Constitution by the Constitution (Thirty Second Amendment) Act, 1973 which came into force with effect from 1st July 1974. The genesis of this Amendment made in the Constitution by introduction of Art. 371D lay in the formation of the State of Andhra Pradesh on 1st November, 1956. The State of Andhra Pradesh was constituted of portions of territories drawn from erstwhile States of Andhra and Hyderabad. The territories from the erstwhile State of Hyderabad which were included in the State of Andhra Pradesh commonly known as the Telangana area. Before the territories of the Telangana area were amalgamated with the other territories to form the State of Andhra Pradesh, there was a set of Rules known as the Mulki Rules in operation in the Telangana area under the regime of the Nizam of Hyderabad and these rules provided for residential clarification for all public employment. Soon after the formation of the State of Andhra Pradesh Parliament enacted Public Employment (Requirement as to Residence) Act, 1957 making special provision for requirement as to residence for public employment and brought it into force with effect from 21st March 1957. The Constitutional validity of this was challenged by some of the persons employed in the ministerial services of the Andhra Pradesh Government in *A. V. S. Narasimha Rao and Others Vs. The State of Andhra Pradesh and Another*, and this Court by its judgment dated 28th March, 1969 held S. 3 of this Act in so far as it related to the Telangana area ultra vires Cl. (3), Art. 16 of the Constitution. This Court, however, left open the question whether in view of the constitutional validity of this Act the Mulki Rules existing in the Telangana area could be said to be continuing in force by virtue of Art. 35(b) of the Constitution. This question, however, came up for consideration before this Court in *The Director of Industries and Commerce, Government of Andhra Pradesh, Hyderabad and Another Vs. V. Venkata Reddy and Others*, . This Court held that the Mulki Rules continued in force even after the formation of the State of Andhra Pradesh under Art. 35(b) of the Constitution. Meanwhile, however, there were two widespread agitations one in the Telangana area and the other in the Andhra region of the State between 1969 and 1972 creating a political turmoil and virtually the paralysing administration of the State. The political leaders of the State were considerably exercised over this situation and they

made a concerted effort to find an endeavouring solution to this problem in order to secure full emotional integration of the people of the State. On 21st September, 1973 a Six Point Formula was evolved by the political leaders to provide for a uniform approach for promoting accelerated development of the backward areas of the State so as to secure balanced development of the State as a whole and providing equitable opportunities to different areas of the State in the matter of education and employment in public services. The implementation of Six Point Formula envisaged inter alia amendment of the Constitution conferring power on the President of India in order to secure smooth implementation of the measures based upon the Six Point Formula without giving rise to litigation and consequent uncertainty. It was in pursuance of this requirement that Art. 371D was introduced in the Constitution in order to give effect to the Six-Point Formula."

13. Sri Raghuram, the learned counsel for the petitioner, submits that in *Sambamurthy v. State of Andhra Pradesh*, (AIR 1987 SC 663) what was canvassed was the constitutional validity of the proviso to Clause (5) of Art. 371D which was quashed by the Supreme Court. As the constitutional validity of the other clauses of Art. 371D has not been the subject matter before the Supreme Court, that question is open for examination of this Court.

14. The learned Advocate General contends that Cl.(10) of Art.371D saves the Article and any order made by the President thereunder from any attack on the touchstone of any other provisions of the Constitution.

15. As mentioned above Clause (10) of Art.371D provides that notwithstanding anything in any other provision of the Constitution, or in any other law for the time being in force the provisions of Art. 371D and of any order made by the President thereunder shall have effect. It therefore follows that the above provisions are not open to question on the touchstone of any of the provisions of the Constitution. So also the order made by the President under Cl. (1) of Art.371D is protected. Mr. Raghuram accepts this position, but says that the constitutional validity of that Article has to be examined not with reference to fundamental rights enumerated in Part III of the Constitution, but with reference to the basic structure of the Constitution.

16. In *C. Surekha Vs. Union of India (UOI) and Others*, , the Supreme Court observed :

"The decision of this Court in *P. Samba-murthy v. State of Andhra Pradesh* AIR 1987 SC 663, does not support the petitioner's contention that Art. 371D militates against the basic structure of the Constitution. The question that was considered by the Constitution Bench in *Sambamurthy's* case (*supra*) was denial of judicial review on the principle accepted in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , and *Sampat's* case, AIR 1987 SC 386, (reference) decision. This Court came to hold that clause (5) which provided that the final order of the Administrative Tribunal shall become effective by its

confirmation by the State Government and it was open to the State Government to modify or annul that order within 90 days militated against the Doctrine of Basic structure. At the same time the Court held that Art. 371D(3) was valid and intra vires the amending powers of the Parliament. This clearly means that the Scheme of Art. 371D was valid and the provision in clause (5) alone was bad. Clause (1) of Art. 371D provides--

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."

In view of the terms of clause(10) and the effect of the decision of the Constitution Bench in Sambamurthy's case (supra), the petitioner is not entitled to any relief on the first ground, namely, for a declaration that Art. 371D militates against the basic structure"" of the Constitution."

16A. The contention that the Presidential Order is violative of the basic structure of the Constitution was again raised in Fazal Ghafoor Vs. Union of India (UOI) and Others, , and it was rejected. The Supreme Court observed:

"By our judgment delivered to-day in C. Surekha Vs. Union of India (UOI) and Others, , we have already held that there is no merit in the allegation of the Presidential Order or the constitutional provision authorising the issuance of such order is hit by violation of the basic structure of the Constitution. So far as the State of Andhra Pradesh is concerned the position is as envisaged in the Presidential Order. In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , this Court has observed that in Super specialities there should really be no reservation. This is so in the general interest of the country and for improving the standard of higher education and thereby improving the quality of available medical services to the people, of India. We hope and trust that the Government of India and the State Government shall seriously consider this aspect of the matter without delay and appropriate guidelines shall be evolved by the Indian Medical Council so as to keep the Super Specialities in medical education unreserved open and free.

Therefore, we are unable to accept the contention of the learned counsel that Art.371D of the Constitution is violative of the basic structure of the Constitution.

17. However, the learned counsel for the petitioner submits that the Order passed by the President under Cl.(1) of Art. 371D is violative of the provisions of Art. 371D itself.

18. Article 371D provides that having regard to the requirements of the State as a whole, for providing equitable opportunities and facilities for the people belonging to different parts of"the State in the matter of public employment and in the matter of education, the President may make an order writ respect to the State of Andhra Pradesh and different provisions may be made for various parts of the State. We have already outlined the scope of the Presidential Order. We

may briefly state the same again; it may be noted that the whole State is divided into 3 local areas having regard to the jurisdiction of the Universities in the State. 85 per cent of the available seats in each of the educational institutions under the control of the State Government are reserved for each local area and 15 per cent of the seats are left open as unreserved for which, inter alia, the candidates of the other local area can compete though there is also a provision in Art. 371D enabling the President to make different provisions for different parts of the State. The Order passed by the President it is obvious, provides equitable opportunities to each local area equally. Opportunities for the residents of the State are equitably distributed. This is in respect of non-Statewide institutions. In regard to the Statewide institutions, as noticed above, 85 per cent of the seats available are divided having regard to the requirements of the State in the ratio of 42:36:22. Nothing inconsistent with Article 371D is pointed out in regard to the provisions of the Presidential Order. The substance of the submission of the learned counsel is that in one local area of University there are certain courses of Super Specialities which if reserved for that local candidates would result in depriving the non-local candidates of the chance of getting admission so when the seats are limited they should be treated as unreserved. We are afraid we cannot accept this contention as it is contrary to the scheme of the Presidential Order.

19. While interpreting para 5 of the Presidential Order a Division Bench of this Court of which one of us (Jeevan Reddy J) is a member in *Dr. Fazal Ghafoor v. The Principal, Osmania Medical College, Hyderabad* (1988) 2 ALT 227, held that even when there is only one seat in a speciality, it cannot be treated as unreserved under proviso to Cl. 2 of para 5. Against this judgment, the matter was carried by SLP to the Supreme Court. The Supreme Court dismissed the SLP and confirmed the judgment of this Court upholding the reservation in the matter of Super Specialities. But in the instant case there is one seat in Andhra Medical College which is treated as unreserved and out of two seats in Osmania Medical College one seat is treated as unreserved. Treating the only seat in A.M.C. as unreserved appears to be against the judgment of the Division Bench of this Court in *Fazal Ghafoor v. The Principal, Osmania Medical College* (1988) 2 A P LT 227. Be that as it may, out of two unreserved seats, the first seat was allotted to Dr. Subbarao at S. No. 1 who secured 88/100 marks and the second seat was allotted to Dr. Murali Krishna at S. No.2 who secured 87/100 marks; the petitioner being the third having obtained 86/100 marks could not come up in selection. The only reserved seat in Osmania Medical College, Hyderabad, was given to a local candidate Dr. Madhukar at S. No. 4 who secured 83/100 marks.

20. The learned counsel invited our attention to the observations of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, to show that the Supreme Court has not favoured the reservation of seats in Super Specialities. This position, as a general principle, is obvious from the observations in the said case and other cases of the Supreme Court. This principle is based on the public interest and the national interest. But having

regard to the special provision made for the State of Andhra Pradesh namely Art.371D which is also enacted in the national and public interest and having regard to competing public and national interest and their priorities, the Order made by the President has been upheld and it has also been observed by the Supreme Court that this general proposition will have no application to the State of Andhra Pradesh. Merely because in one local area there are certain Colleges and on account of operation of the provisions of the Order, the persons in the other local areas will have no chance to secure admission, the Order itself cannot be said to be bad. Statewide educational institution and the Statewide University have been defined in clauses (e) and (f) of Paragraph 2 of the Order. Where the President deemed it fit to make any particular University institution or course as Statewide he has included the same in the definition clause 2(f) or Schedule to the order. This particular course does not find place in the Schedule. So long as it remains as non-Statewide course, it is futile to contend that the Rule of reservation should not operate in respect of the said course. However, we hasten to add that in super specialities where the number of seats are limited and operation of para 5 of the Presidential Order results in hardship to the students, the University/State Government should propose to the President for inclusion of such courses as Statewide in Schedule to the Order.

21. Lastly it is contended by the learned counsel that this Court should so interpret the provisions of the Presidential Order so as to ensure that the seats in Super Specialities are equitably distributed among different local areas. He relied on the following observation of Lord Denning in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All ER 155.

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

This approach of Lord Denning in construction of the statute has been approved and adopted by the Supreme Court in number of cases. (Vide *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, , *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, and *State of Karnataka and Another Vs. Hansa Corporation*, . But in our view the principle suggested by Lord Denning cannot be applied in the instant case.

22. In *Jagannalha Rao v. The State of Andhra*, AIR 1957 Andh Pra463, Subba Rao C.J. (as he then was) observed:

"The observations are no doubt graphic and even telling. What the learned counsel contends for is not the straightening out" of any ruck in the texture of

the section but to remove a portion of it and weave into it a new one. This a Court cannot obviously do."

23. This principle is applicable where the language of the Section is either ambiguous or silent. It is only then that the principle of ironing out the creases would apply. Here the ruck, if we may say so, cannot be removed by mere ironing. What is required is cutting it out by redesigning the paras in the Presidential Order which, we think, is impermissible.

24. In the result, the writ petition fail and it is accordingly dismissed. Having regard to the facts and circumstances of the case, we make no order as to costs.

25. Immediately after this judgment was pronounced, the learned Counsel for the petitioner requested for leave to appeal to the Supreme Court. In our opinion, no substantial question of law of general importance is involved which required to be considered by the Supreme Court. The oral leave is rejected.

26. Petition dismissed.