
(2017) 08 AP CK 0038
In the Andhra Pradesh High Court
Case No : 33741

B. Satish Kumar, & Ors.,

APPELLANT

Vs

The Union of India, & Ors.,

RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

Constitution of India, Article 19(1)(g),
Article 25, Article 30, Article 29(1), Article 371-D -
Protection of certain rights regard

Citation : (2017) 08 AP CK 0038

Hon'ble Judges : V. Ramasubramanian, T. Rajani

Bench : DIVISON BENCH

Advocate : S.Satyam Reddy, D.V. Seetharam Murthy, L.Ravi Chander,
S.Ramachandra Rao, S.Lakshma Reddy C.V. Mohan Reddy,?B.Narayana Reddy,
S.Vivek Chandra Sekhar, A.Prabhakar Rao

Judgement

1. The anguish expressed by Justice V.R. Krishna Iyer, 37 years ago in Dr. Jagadish Saran v. Union of India , which goes as follows, would aptly sum up our feelings on the issues that have fallen for our consideration in these petitions:
".....The people in the States are caught in a happy network of mutuality, woven into a lovely garment of humanity, whose warp and woof is India. This is the underlying fundamental of the preambular resolve registered in our National Parchment. So we insist that blind and bigoted local patriotism in xenophobic exclusivism is destructive of our Freedom and only if compelling considerations of gross injustice, desperate backwardness and glaring inequality desiderate such a purposeful course can protective discrimination gain entrance into the portals of college campuses....." A Prelude

2. The Medical Council of India and the Dental Council of India issued four notifications, two on 21.12.2010 and two on 31.05.2012, amending the existing Regulations, for admission to graduate and postgraduate medical courses. These Regulations actually stipulated the conduct of a uniform entrance examination for

admission to graduate and postgraduate medical courses. These Regulations came to be challenged by some institutions before the Supreme Court and some before various High Courts, on the ground that they infringed the fundamental right guaranteed under Article 19(1)(g) and the right guaranteed to religious and linguistic minorities.

3. After transferring to itself all the writ petitions pending before different High Courts, the Supreme Court sustained the challenge in a decision reported in *Christian Medical College Vs. Union of India* .

4. However, the Medical Council of India filed petitions for review. These review petitions were referred to a Constitution Bench, which, by an order dated 11.04.2016, allowed the review petitions and directed the main cases to be listed for fresh hearing. The fall out of this order was that the amendment to the Regulations of the Medical Council of India and the Dental Council of India came back to force, though the challenge to the same is still alive.

5. Thereafter, an Ordinance was issued on 24.05.2016 for amending the Indian Medical Council Act, 1956. Though a challenge was made to the Ordinance, in the Vacation Court, the Supreme Court refused to stay the Ordinance. Subsequently, the Ordinance became an Act and the President of India gave assent on 04.08.2016 and the Act was notified in the Gazette of India on 05.08.2016. The Act was deemed under Section 1(2) of the Act, to have come into force on 24.05.2016. By this amendment, Section 10-D was inserted in the Indian Medical Council Act, 1956 which reads as follows: "10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner. Provided that notwithstanding any judgment or order of any Court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."

6. By a notification, dated 10.03.2017, the Medical Council of India further amended the "Postgraduate Medical Education Regulations 2000" in exercise of the power conferred by Section 33 of the Indian Medical Council Act, 1956. This was done with the previous sanction of the Central Government. By this amendment, Regulation 9-A was inserted into the "Postgraduate Medical Education Regulations 2000". This Regulation 9A reads as follows: "9A. Common Counseling

(1) There shall be a common counseling for admission to all Postgraduate Courses (Diploma/MD/MS/DM/M.Ch.) in all Medical Educational Institutions on

the basis of merit list of the National Eligibility-cum-Entrance Test.

(2) The designated authority for counseling for the 50% All India Quota seats of the contributing States shall be conducted by the Directorate General of Health Services. Such counseling as per the existing scheme shall be only for Diploma and MD/MS courses.

(3) The counseling for all Postgraduate Courses (Diploma/MD/MS/DM/M.Ch.) in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government University, Deemed University, Trust, Society or a Company/Minority Institutions/Corporations shall be conducted by the State Government. Such common counseling shall be under the over-all superintendence, direction and control of the State Government."

7. Pursuant to the aforesaid Regulations, the National Board of Examinations issued an Information Bulletin for NEET (Superspeciality Courses) 2017. The Information Bulletin issued by the National Board of Examinations made it clear in Clause (12) that "as per the judgment of the Constitution Bench of the Supreme Court in W.P.(Civil) No.350 of 1998, there is no reservation of seats for Superspeciality DM/MCh courses".

8. Regulation 9A of the MCI Regulations, 2017 came to be challenged in two separate writ petitions under Article 32 of the Constitution before the Supreme Court. In W.P. (Civil) No.261 of 2017, the challenge was made by the Christian Medical College. In W.P.(Civil) No.267 of 2017, the challenge was by Dar-Us-Salam Educational Trust. The challenge appears to be limited to the application of the amendment to minority educational institutions. Therefore, the Supreme Court issued certain interim directions on 03.05.2017 in W.P. (Civil) No.261 of 2017 filed by the Christian Medical College, permitting the States to carry out the counseling, with the authorized representatives of the minority institutions being present at the time of counseling. Another set of interim directions were issued in W.P.(Civil) No.267 of 2017 filed by Dar-Us-Salam Educational Trust, making it clear that common counseling for admission shall be conducted by the Director General of Health Services even for deemed Universities. However, the Supreme Court made it clear in its order, dated 09.05.2017, passed in W.P.(Civil) No.267 of 2017, that the interim directions issued therein will not apply to the States of Andhra Pradesh, Telangana and Jammu & Kashmir. But, it must be noted that the case of Dar-Us-Salam Educational Trust was confined to admission to graduate medical courses and not postgraduate medical courses. In any case, the challenge was in relation to the right of minorities.

9. The impact or the effect of the developments that have taken place from the year 2010 up to May, 2017, which we have brought on record in the preceding paragraphs, can be stated in brief, as follows: i) By the amendment to Regulation 9 of the Postgraduate Medical Education Regulations 2010 and 2012, admission to postgraduate medical courses has come to be regulated through a common

entrance examination.

ii) By the insertion of Regulation 9-A, by way of an amendment to the Postgraduate Medical Education Regulations in the year 2017, admission to postgraduate medical courses has come to be channelized through a common nation-wide counseling programme designed by the National Board of Examinations.

10. Though the challenge to the common entrance test introduced under the Regulations of the years 2010 and 2012 was sustained in the first instance by the Supreme Court in *Christian Medical College*, the said decision was recalled by a subsequent decision reported in (2016) 4 SCC 342, and the Regulation introducing a common entrance test has come to stay at least for the present (since the Supreme Court allowed the review in *Christian Medical College Vs. Union of India*, but kept the challenge alive).

11. But, insofar as Regulation 9A introduced by way of amendment to the Regulations in the year 2017 is concerned, the same has neither been stayed nor set aside by any Court including the Supreme Court. All that the Supreme Court has done is to provide certain safeguards only to the minority educational institutions, insofar as Regulation 9A is concerned. Similarly, the Supreme Court has granted a limited protection to the States of Telangana, Andhra Pradesh and Jammu & Kashmir, insofar as undergraduate medical courses are concerned (and not in so far as Post Graduate and Superspeciality courses are concerned).

12. The net result of all the above developments that took place in the past seven years is, that the students from the States of Telangana and Andhra Pradesh (i) had to appear and in fact appeared for NEET-2017, and

(ii) had to apply to the National Board of Examinations and in fact applied for participation in the common counseling held pursuant to Regulation 9A of the MCI Regulations, 2017.

13. After appearing for NEET-2017 and after applying for common counseling pursuant to the Information Bulletin issued by the National Board of Examinations, a group of 12 doctors holding postgraduate degrees in medicine came up with a writ petition in W.P.No.27162 of 2017, seeking the issue of a Writ of Mandamus not to throw open the seats available in superspecialities in the colleges affiliated to KNR University of Health Sciences and Dr.NTR University of Health Sciences in the States of Telangana and Andhra Pradesh, to students from outside these two States. This was on the ground that the same would be in violation of the Presidential Order issued under Article 371D of the Constitution. Along with the writ petition, the petitioners filed M.P.No.33741 of 2017 seeking an interim stay of counseling for the seats in the superspeciality courses coming under the control of the aforesaid two Universities located in the States of Telangana and Andhra Pradesh.

14. On 11.08.2017, we ordered notice to the respondents and posted the matter

to 16.08.2017. No ex parte interim order was passed on the same day. But, on the next date of hearing, namely, 17.08.2017, we passed an interim order to the following effect: "The petitioners, who are Post Graduates in Medicine and who have applied for admission to Super Speciality Courses in various colleges in the States of Andhra Pradesh and Telangana, have come up with the above writ petition challenging the communication sent by the Ministry of Health and Family Welfare, Government of India, dated 04-5-2017, informing the National Board of Examination that there will be a common counselling for all seats of NEET-Super Specialities at the National Level to be conducted by Directorate General of Health Services.

Pending disposal of the writ petition, the petitioners are seeking a stay of the counselling for the seats in Super Specialities Courses coming under the control of the respondents 6 and 8.

Heard Mr. S.Satyam Reddy, learned Senior Counsel appearing for the petitioners, Mr. B.Narayana Reddy, learned Assistant Solicitor General of India appearing for the respondents 1 to 3, Mr. Vivek Chandra Sekhar, learned Standing Counsel for MCI, the respective Government Pleaders of Telangana and Andhra Pradesh, who are respondents 5 and 7, Mr. A. Prabhakar Rao, learned counsel for the 6th respondent-University and Mr. Taddi Nageswara Rao, learned Standing Counsel for the 8th respondent- University.

The main, if not the only grievance, of the petitioners is that admission to professional courses in the States of Telangana and Andhra Pradesh are governed by the Presidential Order issued in exercise of the power conferred by Article 371-D of the Constitution and that since these Presidential Orders are to have effect notwithstanding anything contained in any other part of the Constitution, the respondents are not entitled to conduct a common counselling at the National Level, for the seats coming within the control of the respondents 6 and 8/ Universities.

The learned Standing Counsel for the 6th respondent/University produced before us, the copies of communications, the first dated 21-7-2017 addressed to the National Board of Examination and the second dated 02-8- 2017 addressed to the Directorate General of Health Services. In these letters, the 6th respondent pleaded that they may be allowed to conduct counselling and process the admissions for DM/MCh Courses in the colleges affiliated to their University, in the light of the Presidential Order issued under Article 371-D. But by a reply dated 27-7-2017, the National Board of Examinations rejected the request of the 6th respondent.

The 8th respondent has also sent a similar letter to the National Board of Examinations on 07-8-2017, but there was no response.

Therefore, the claim made by the petitioners appears to be supported by both the Universities, namely, the respondents 6 and 8. In other words, the respondents 6 and 8 are on the same page as the petitioners.

As we have pointed out earlier, the main issue raised in these writ petitions is as to whether counselling for admission to Super Specialities in Medicine can be conducted at the National Level, even for seats available in the Medical Colleges affiliated to the respondents 6 and 8, especially when the States of Andhra Pradesh and Telangana enjoy a special status by virtue of Article 371-D of the Constitution. It is relevant to note that Article 371-D affords immunity to reservation on the basis of domicile, notwithstanding anything contained in any other part of the Constitution. In fact, the scope and effect of the Presidential Orders issued under Article 371-D of the Constitution already came up for consideration before the Supreme Court while dealing with the question of National Entrance cum Eligibility Test.

A peep into the history of the introduction of the National Eligibility cum Entrance Test would show that the Medical Council of India and the Dental Council of India issued notifications, two on 21-12-2010 and the remaining two on 31-5-2012, amending all existing regulations both for admission to Graduate Medical Courses and Post Graduate Medical Courses. These notifications came to be challenged before the Supreme Court in a batch of writ petitions. They were also challenged in various High Courts and the Supreme Court transferred to itself all the cases filed before different High Courts. By a common judgment rendered in *Christian Medical College v. Union of India* (2014) 2 SCC 305, a 3-member bench of the Supreme Court, by a majority, set aside the notifications. In general, the issues raised before the Supreme Court revolved around (i) the Fundamental Right under Article 19(1)(g) of the Constitution and (ii) the right guaranteed to religious and linguistic minorities under Article 30 of the Constitution.

Incidentally, the combined State of Andhra Pradesh raised an objection in those cases, to the notifications of the Medical Council of India and the Dental Council of India introducing NEET, on the ground that insofar as the State of Andhra Pradesh (combined State) was concerned, there are special provisions in the form of Presidential Orders under Article 371-D of the Constitution. The said objection was dealt with by the Supreme Court in paragraph-159 of its judgment dated 18-7-2013 in *Christian Medical College* as follows:

"159. This brings us to the last issue, which has been raised before us regarding the impact of the Presidential Orders made under Article 371-D of the Constitution of India. As pointed out by Mr. L.Nageshwar Rao, learned Senior Advocate, special enactments have been made in the States of Andhra Pradesh and Tamil Nadu regarding admission of students in the different medical colleges and institutions being run in the said States. The said legislation being under Entry 25 of List III of the Seventh Schedule to the Constitution, the question which arises is whether the amended MCI Regulations would have primacy over the said State enactments. The question is answered by Article 371-D of the Constitution which empowers the President to make special provisions with respect to the State of Andhra Pradesh, including making orders with regard to admission in educational institutions. Clause 10 of Article 371-D provides as

follows:

Thereafter, review petitions were filed on the file of the Supreme Court by the Medical Council of India and others in Review Petition (C) Nos.2159-2268/2013. These review petitions were referred to a Constitution Bench, which by an order dated 11-4-2016 allowed the review petitions and directed the original challenge to the notifications issued by the Medical Council of India and the Dental Council of India to be listed for fresh hearing.

But even before the review petition was allowed, another case came up before the Supreme Court by way of a writ petition under Article 32 of the Constitution challenging the restrictions imposed by the States of Andhra Pradesh, Telangana and Tamil Nadu with regard to admission to Super Specialities Courses. By a judgment reported in *Sandeep v. Union of India* (2016) 2 SCC 328, the Supreme Court rejected the challenge insofar as the same related to the States of Andhra Pradesh and Telangana. This was on the basis of the Presidential Order issued under Article 371-D of the Constitution.

After referring to Article 371-D and the Presidential Order issued pursuant thereto, the Supreme Court indicated in *Sandeep* that though there should not be any reservation of any kind in respect of Post Graduate or Super Speciality Courses, nothing can be done so long as Article 371-D held the field. In paragraph-36 of its judgment in *Sandeep*, the Supreme Court held as follows:

"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 superspeciality 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* and the concept of percentage had undergone certain changes. In *Reita Nirankari*, the same three-Judge Bench clarified the position which we have already reproduced hereinbefore. However, in *C. Surekha*, 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*."

Though the Supreme Court, in *Sandeep*, echoed the same sentiments as expressed in the previous cases, the Supreme Court nevertheless dismissed the

writ petition insofar as it pertained to the States of Andhra Pradesh and Telangana. In other words, the challenge to the reservation created in terms of Article 371-D was rejected by the Supreme Court in Sandeep.

As a matter of fact, we have our own reservations on this issue. Article 371-D was inserted, with the avowed object of removing regional imbalances within the combined State. It was not introduced for the purpose of removing the imbalances between the State of Andhra Pradesh vis-?-vis other States of the country. Therefore, the process of rationalization through nationalization, of admission to super specialities, should not normally be scuttled by any regional sentiments.

But we are nevertheless bound by the law as it exists today. The Supreme court itself felt bound, in its decision in Sandeep by Article 371-D and the Presidential Order. In such circumstances, we have no alternative except to follow the law as it stands today.

Hence, there will be an interim order directing the respondents to put on hold the common counselling proposed to be held admission to Super Specialties Courses in Medicine, only insofar as the seats in the colleges affiliated to the respondents 6 and 8 are concerned. The respondents 1 to 3 are directed to file a counter on or before 23-8-2017, so that the issue could be decided before the deadline fixed by the Supreme Court for admission to these courses expires."

15. In other words, by the aforesaid interim order passed by us, we virtually shut the doors (of course, hesitatingly) to students from the other States in India, to seek admission to superspeciality courses in the colleges located in the States of Telangana and Andhra Pradesh.

16. As if proving the law of karma in the realm of religion and the Newton's third law of motion in the realm of science, the National Board of Examinations shot back with a notice, dated 18.08.2017, not allowing the candidates of Andhra Pradesh and Telangana to participate in the common counseling held nationwide and also cancelling the allotments made in the first round of counseling to candidates hailing from Andhra Pradesh and Telangana. The notice issued by the National Board of Examinations on 18.08.2017 in response to (or in retaliation to) the interim order passed by this Court, reads as follows: "In view of the judgment of the Hon'ble High Court Hyderabad in W.P.No.27162 of 2017, it has been decided by the competent authority that candidates of Andhra Pradesh and Telangana will not be allowed to participate in the online counseling NEET SS-2017 conducted by MCC. Hence the earlier result of Round-1 online NEET Super Specialty counseling-2017 is treated to be null and void with immediate effect. Revised result for round 1 NEET SS-2017 will be updated soon on the website. All the candidates are advised to be kept in touch with the website (mcc.nic.in) for further necessary updation.

This issues with the prior approval of the competent authority."

17. Shocked at the cancellation of admissions granted to them in various superspecialities in various colleges located in the other parts of the country, the natives of Andhra Pradesh and Telangana, who have been paid back in their own coin, have come up with five writ petitions in W.P.Nos.27988, 28025, 28026, 28042 and 28055 of 2017, challenging the cancellation of admission granted to them.

18. The theme of the song in the first writ petition, W.P.No.27162 of 2017, is that "all seats in postgraduate medical courses in the States of Telangana and Andhra Pradesh are intended only for those who are domiciles of these two States". The theme of the song in the other five writ petitions is that "the seats in the colleges in the other States of the Country should also be thrown open to us". Thus, the petitioners in the first writ petition and the petitioners in the other five writ petitions represent competing interests (if not conflicting and sectarian interests). While the cry of the petitioners in the first writ petition is "all that is here is ours", the cry of the petitioners in the other five writ petitions is "all that is there outside, shall also be made available to be shared by us".

19. Since the orders of cancellation of allotment challenged in the batch of five writ petitions, were passed purportedly as a consequence of the interim order granted by us in the first writ petition W.P.No.27162 of 2017, it became necessary for us to take up all these petitions together for consideration. Hence the batch of 5 writ petitions were tagged along with the first writ petition and heard together.

20. We have heard Mr.Sathyam Reddy, learned Senior Counsel appearing for the petitioners in W.P.No.27162 of 2017 and M/S. C.V.Mohan Reddy, S.Ramachandra Rao, L.Ravichander, D.V.V.Sitaram Murthy and Lakshma Reddy appearing for the petitioners in the other 5 writ petitions. Though we had ordered notice to the Union of India and the National Board of Examinations, way back on 11-8-2017 with specific directions to them to file a counter by 23-8-2017, Mr.B.Narayana Reddy, learned Assistant Solicitor General pleaded helplessness and sought further time. But as counseling for Suprespecialities was already in progress with the deadline being 31- 8-2017, we could not allow the luxury of time either to the respondents (and even to us).

21. We think that we have to take up W.P.No.27162 of 2017 first, to see ? (a) whether the interim order passed by us on 17-8-2017 could have justifiably led to the orders of cancellation dated 18-8-2017 and (b) if so, whether the interim order should be continued for the sake of those 12 writ petitioners in the first writ petition, at the cost of scores of candidates who have secured admission in various colleges across the country.

22. Without compromising on their commitment to the cause of their clients, but at the same time not to be seen as offending local sentiments, the learned Senior Counsel appearing for the petitioners in the entire batch, attempted to save the milk as well as be friendly to the cat by taking a position on the first

issue that the impugned orders of cancellation could not have been passed justifiably as a fallout of the interim order passed by us. In other words, the first argument of all the Senior Counsel for the petitioners was that the interim order passed in W.P.NO.27162 of 2017 merely directed the implementation of a Constitutional mandate flowing out of the Presidential Order issued under Article 371-D of the Constitution and that it would not follow as a corollary that students from Andhra Pradesh and Telangana cannot seek admission elsewhere. As a matter of fact, all the learned Senior Counsel first assailed the impugned order on the ground of violation of the principles of natural justice, but the said argument needs to be rejected outright, since an order, if it had been passed in implementation of an order passed by a Court, cannot be assailed as violative of the principles of natural justice by those affected by the said order, as their only remedy would be to seek the vacation of the order of the Court. Therefore, the contention regarding violation of natural justice is rejected.

23. The contention that the interim order passed by us on 17-8- 2017 was not intended to deprive the students of these two States to seek admission in the Universities and colleges in the other parts of the country, may be technically correct. It is true that we were not conscious of the consequences that would fall out of our interim order. But it does not mean that the orders of cancellation of admission to the petitioners in the batch of five writ petitions, were passed upon a misrepresentation of our interim order dated 17-8-2017. In the course of the arguments advanced before us, it became clear that by virtue of the Presidential Order and by virtue of judicial pronouncements of this Court, no student from any other part of the country can secure admission to any of the State-wide educational institutions or State-wide Universities in the States of Andhra Pradesh and Telangana even today. By a combination of the Presidential Order and judicial pronouncements of this Court, 100% of the seats in all the State-wide educational institutions and State-wide Universities in these 2 States, are wholly reserved for the natives of the States of Andhra Pradesh and Telangana. Therefore, our interim order dated 17-8-2017 directing the Director General of Health Services and the National Board of Examination to implement the Presidential Order, was bound to boomerang on the principle of torque, upon the very natives of these two States and this is what has happened through the orders of cancellation of admission.

24. The contention of the learned Senior Counsel appearing for the petitioners that our interim order dated 17-8-2017 has been misinterpreted and misunderstood by the respondents, is wholly incorrect. To be honest and truthful to our conscience, we should admit that we have understood the consequences of our own interim order, only after the impugned orders of cancellation of admission were passed by the National Board of Examinations.

25. Once it is clear that the orders of cancellation of admission assailed in the batch of five writ petitions cannot be challenged on the ground of (i) violation of natural justice and (ii) misinterpretation of our interim order, then it follows as a

corollary that the students on either side can have only one of the two benefits. Either the students should understand the fallout of the strict interpretation of Article 371-D, which would cause more harm than benefit or continue to fight on parochial lines. In other words, if the interim order passed by us on 17-8-2017 is lawfully obliged to be continued, the orders of cancellation of admission to the petitioners in the other five writ petitions should be upheld. Otherwise, the interim order passed in W.P.No.27162 of 2017 should be vacated so as to give the students of both the States to have greater opportunities Pan India.

26. A feeble attempt was made by a couple of learned Senior Counsel appearing for the petitioners in the batch of 5 writ petitions to get out of the impasse, by contending that their clients were not the beneficiaries of the Presidential Order and that therefore, they cannot be penalized. It is their contention that the petitioners who have suffered orders of cancellation of admission, studied M.B.B.S in various other States and got admission to P.G. courses in Medicine, in the States of Telangana and Andhra Pradesh, only as against the seats left unreserved (15%) and available for the "non-locals".

27. But the above contention lies in the realm of "half truth" like "Aswathama hatah kunjarah". As we have pointed out elsewhere, there is reservation of 85% of the seats in all institutions for the locals, under the Presidential Order. The remaining 15%, theoretically available for non-locals, has already been snatched away under (i) G.O.P.No. 646, dated 10-7-1979 (ii) a statutory rule issued under the A.P. Capitation Fee Act, 1983 and (iii) judicial pronouncements of this court. Therefore, the petitioners in the batch of 5 writ petitions, are students who got admission as against the unreserved 15% seats, only because they were natives of these 2 States and only because they fulfilled the criteria laid down under (i) G.O.P.No. 646, dated 10-7- 1979 (ii) a statutory rule issued under the A.P. Capitation Fee Act, 1983, even to be eligible for being treated as non locals. In other words, the petitioners in the group of 5 writ petitions are secondary beneficiaries of the Presidential Order. If they have had their moorings in other States, they could not have secured admission to any course, leave alone P.G. Medical courses in these 2 States. This fact is also confirmed by the Standing counsel for both the universities. Therefore, the petitioners cannot wriggle out of the impact of the Presidential Order when it hurts them, after having been a beneficiary of the same.

28. In view of the above fundamental premise, it is necessary to take up first, the question as to whether we should continue our interim order dated 17-8-2017 or not. We have already extracted our interim order. The purport of our interim order is not to make the seats available in the two Universities in the States of Telangana and Andhra Pradesh to the students belonging to the other States. This order was necessitated on the bedrock of Article 371-D and the Presidential Order. Therefore, it is necessary at the outset to test whether the right claimed by the petitioners in W.P.No.27162 of 2017 actually flows out of the Presidential Order and Article 371-D of the Constitution, especially in the

changed scenario after the introduction of NEET and especially after the bifurcation of the State. History behind the Presidential Order:

29. Prior to independence, the State of Hyderabad ruled by the Nizam comprised of three linguistic areas, viz., Telangana, Maratwada and Karnatak. In the year 1919, the Nizam issued a Firman promulgating what came to be known as "Mulki Rules". These Rules were contained in Appendix-N to the Hyderabad Civil Service Regulations. The expressions "Mulki" and "Mulki Rules" were used in Rule 39 of the State Regulations which provided that no person shall be appointed to any superior or inferior service without the specific sanction of His Exalted Highness if he is not a Mulki. A Mulki was defined as a person (1) who was a subject of Hyderabad State by birth; or (2) who was a permanent resident of the Hyderabad State for atleast 15 years and who has abandoned the idea of returning to the place of his previous residence, as reflected in a certificate issued in the prescribed form attested by a Magistrate; or (3) whose father having completed 15 years of service, was in the Government service at the time of the child's birth; or (4) who was the wife of a Mulki.

30. On 26.01.1950, the date on which the Constitution of India came into effect, the State of Hyderabad was declared as a Part-B State. Therefore the Government of Hyderabad issued a circular letter dated 14.06.1950 to the following effect: "Government is now advised that the Mulki Rules are, save to the extent of their consistency with the Constitution only, saved by clause (b) of Article 35. It is therefore necessary to put out of operation the requirement laid down in the Mulki Rules to the extent that they prescribe qualifications regarding birth and descent" As a consequence of the above circular, the Mulki Rules which prescribed birth and descent became inoperative from 14.06.1950. But the portion of the Mulki Rules not inconsistent with the Constitution continued to have the force of law by virtue of Article 35 (b) of the constitution.

31. When the States Re-Organization Act 1956 came into force on 01.11.1956 and the State of Andhra Pradesh came into existence with Telangana Region being included in the said State and the other two regions, viz., Maratwada and Karnatak being annexed respectively to Maharashtra and Karnataka, the Mulki Rules continued to operate by virtue of Section 119 of the States Re-Organization Act, 1956. But by a historical paradox, the Rules continued to operate not only in the State of Andhra Pradesh but also in parts of Maharashtra and Karnataka.

32. Within a few months of the State Re-Organization taking place on 01.11.1956, the Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957 in pursuance of Article 16 (3) read with Article 371 (1) of the Constitution, making a special provision for requirement as to residence in regard to certain classes of Public Employment in certain areas and to repeal the existing laws prescribing any such requirement. Under Section 2 of the said Act all laws, which continued to be in force in any State or Union territory by virtue of clause (b) of Article 35 of the Constitution, prescribing any requirement as to

residence, in regard to any class of public employment stood repealed. In the place of such laws, Section 3 of the 1957 Act empowered the Central Government to make Rules prescribing a requirement as to residence, within the Telangana Area for appointment to any subordinate service or post under the State Government of Andhra Pradesh. Section 3 empowered the Central Government to make similar rules prescribing a requirement as to residence for appointment to any subordinate service under the control of the Administrator of Himachal Pradesh, Manipur or Tripura and also to any service or post under a local or other authority within Telangana. Section 5 of the 1957 Act contemplated the rules framed by the Central Government under Section 3 to be in force only for a period of 15 years so that they cease to have any effect after 15 years.

33. Therefore on and from the date of commencement of Central Act No.44 of 1957, viz., 21.03.1959 (the Act was published in the Government Gazette under GSR No.323, dated 21.03.1959), the Mulki Rules stood repealed.

34. In exercise of the powers conferred by Section 3 of Act 44 of 1957, the Central Government issued a set of Rules known as Andhra Pradesh Public Employment (Requirement as to Residence) Rules 1959, prescribing that for appointments to certain posts, within the Telangana area of the State of Andhra Pradesh, the candidates should satisfy the requirement prescribed therein as to residence.

35. But it appears that appointments were made to posts in Telangana area, of persons, who were not domiciles of the area. Therefore, issues were raised on and off eventually leading to a resolution being passed by the leaders of all political parties on 19.01.1969 to relieve from service of non-domicile persons of Telangana region, so that those posts could be filled up by persons possessing domicile qualifications. Pursuant to the said decision, the Government issued relieving orders to several persons during January ? February, 1969. Some of those persons challenged the said decision of the Government by way of a writ petition directly before the Supreme Court under Article 32 of the constitution. The Constitution Bench of the Supreme Court by a decision rendered on 28.03.1969 in A.V.S. Narasimha Rao v. State of Andhra Pradesh declared Section 3 of the Public Employment (Requirement as to Residence) Act, 1957 as well as Rule 3 of the Rules framed thereunder as ultra vires the Constitution. Interestingly, it was brought to the notice of the Constitution Bench that there were a set of Rules known as Mulki Rules which provided similar safeguards and that the same continued to be in force, until repealed by the 1957 Act. But the Constitution Bench, in A.V.S. Narasimha Rao, refused to go into the said question as seen from the penultimate paragraph of the decision.

36. Thereafter, a batch of writ petitions came to be filed on the file of the Andhra Pradesh High Court. Two questions of importance were raised in those writ petitions and they were: (1) Whether the decision of the Constitution Bench of the Supreme Court in A.V.S. Narasimha Rao declaring Section 3 of the 1957 Act to be unconstitutional, would automatically result in Section 2 of the Act

containing a provision for repeal also die a natural death; and

(2) whether the Mulki Rules that were saved by Article 35(b) of the Constitution but repealed by Section 2 of the 1957 Act would survive or not.

37. In *P. Lakshmana Rao v. State of Andhra Pradesh* a Full Bench of the High court of Andhra Pradesh held on the first question that once Section 3 of the 1957 Act had been declared unconstitutional, Section 2 containing the repealing provision cannot survive on a stand alone basis. As a consequence, the Full Bench held on the first question that the entire Act was invalid. On the second question, the Full Bench held that the Mulki Rules continued as valid law and that these Rules, insofar as they fix the residential qualification of 15 years for the purposes of appointment to a post under the Government shall continue to be a valid law in force. However, the Full Bench did not express any opinion in regard to the other part of the Mulki Rules.

38. But the correctness of the view taken by the Full Bench of the Andhra Pradesh High Court in *P. Lakshmana Rao v. State of Andhra Pradesh* was doubted by a Division Bench, on the ground that on a question of far reaching importance, due weight was not given to several aspects of the question. Therefore, the Division Bench directed a writ appeal arising out of the redeployment of a few Extension Officers to the post of Senior Inspectors carrying lesser scale of pay, to be referred to a larger bench for re-examination of the question whether the Mulki Rules can be deemed to be effective, in the light of the decision of the Supreme Court in *A.V.S. Narasimha Rao*. After overruling the objection regarding the maintainability of a reference by a Two Member Bench finding fault with the Full Bench, a Five Judge Bench of the Andhra Pradesh High Court held in *V. Venkata Reddy v. Director of Industries and Commerce* that the Mulki Rules are not valid and operative after the formation of the State of Andhra Pradesh. By a majority, the Five Member Bench held that the Mulki Rules did not revive and cannot be deemed to be valid in view of the decision of the Supreme Court in *A.V.S. Narasimha Rao*. As a consequence, the Five Member Bench of the Andhra Pradesh High Court overruled the decision of the Three Member Bench in *P. Lakshmana Rao*.

39. The said decision of the Five Member Bench of the Andhra Pradesh High court in *V. Venkata Reddy v. Director of Industries and Commerce* reached the Supreme Court on a certificate granted by the High Court. In a decision reported as *Director of Industries and Commerce v. V. Venkata Reddy*, the Constitution Bench of the Supreme Court reversed the decision of the Five Member Bench of the Andhra Pradesh High court. In brief, the Constitution Bench held in *V. Venkata Reddy* as follows: "1) That the words "laws in force in the territory of India" appearing in Article 35 (b) and Article 372 of the constitution would include the laws in force not only in a place that was part of the territory of India before the commencement of the Constitution but also in a place which got included within the territory of India after the commencement of the Constitution;

2) That the Mulki Rules continued in force by virtue of Article 35 (b) of the Constitution;

3) That the Mulki Rules also continued to be in force even after the constitution of the State of Andhra Pradesh under the States Re- Organisation Act, 1956; and

4) That Section 2 of the Public Employment Act, 1957 was also bad insofar as it dealt with Telangana area.

40. During the pendency of the aforesaid case, two agitations, one in 1969 and another in 1972, known respectively as the Telangana agitation and Jai Andhra agitation rocked the State. Since the agitation took a violent turn, Presidents Rule was imposed in the State on 10-1- 1973. Normalcy was restored when a Six Point Formula was arrived at by and between the leaders of the two regions. The Six Point Formula provided for: (1) accelerated development of the backward areas of the State;

(2) Institution of uniform arrangements throughout the State enabling adequate preference to local candidates in the matter of admission to Educational Institutions;

(3) Preferential treatment to a specified extent in the matter of direct recruitment to Non-Gazetted (other than some posts) posts and corresponding posts under the local bodies and the posts of Tahsildars, Junior Engineers and Civil Assistant Surgeons;

(4) Setting up of a high-power Administrative Tribunal for dealing with the grievances of those in public employment;

(5) An amendment of the Constitution in a manner conferring enabling powers on the President, so that the implementation of the formula did not lead to further litigation and consequent uncertainty; and

(6) The discontinuance of the Mulki Rules and Regional Committee.

41. With a view to implement the Six Point Formula, the Constitution (32nd Amendment) Act, 1973 was enacted. By this amendment, clause (1) of Article 371 (pursuant to which the 1957 Act was passed by Parliament) was omitted and two new Articles viz., Article 371 D and 371 E were inserted. Simultaneously, the State of Andhra Pradesh also passed the Mulki Rules (Repeal) Act, 1973, as it became redundant.

42. Clause (1) of Article 371-D empowered the President to provide, by order, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education. The order issued by the President under Article 371-D(1) may specify in part or parts of the State which shall be regarded as the local area 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. The order made by the President would also specify the extent to which and the manner in

which and the conditions subject to which, preference or reservation shall be given in the matter of admission to any such university or other educational institution. Clause (10) of Article 371-D declared that the provisions of Article 371-D and any order made by the President shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.

43. In exercise of the powers conferred by clauses (1) and (2) of Article 371, the President of India issued an order known as the A.P. Educational Institutions (Regulation of Admissions) Order, 1974.

44. The Scheme of the Presidential Order, 1974 in a nutshell, can be summarized as follows: (1) The Presidential Order divided the Educational Institutions and the Universities existing in the State of Andhra Pradesh, into three categories, viz.,

(i) institutions listed in the schedule to the Presidential Order and defined in Para 2(e) of the Presidential Order as "Statewide Educational Institutions";

(ii) Andhra Pradesh Agricultural University, Jawaharlal Nehru Technological University and Nizams Institute of Medical Sciences, grouped together as "Statewide Universities" within the meaning of Para-2(f) of the Presidential Order; and

(iii) five other universities, viz., Andhra University, Nagarjuna University, Osmania University, Kakatiya University and Sri Venkateswara University.

(2) Under para-5 of the Presidential Order, 85% of the available seats in every course of study provided by the Andhra University, Nagarjuna University, Osmania University, Kakatiya University and Sri Venkateswara University, which come under the third category as indicated in the preceding paragraph, shall be reserved in favour of the local candidates in relation to the local area in respect of such University.

(3) Similarly, para-6 reserved 85% of the available seats in every course of study provided by the State-wide Universities and Statewide Educational Institutions, referable to the Schedule to the Presidential Order and para-2(f) of the Presidential Order (which come under categories-1 and 2 indicated in the preceding paragraph) to local candidates in relation to local areas in the ratio of 42: 36: 22.

(4) The question as to who could be considered as a "local candidate" with reference to a particular "local area" is to be determined in terms of two different parameters provided in paragraph-4 of the Presidential Order. Paragraph-4 of the Presidential Order provided two independent criteria. The first related either to the study in an educational institution in the very same local area for a period of not less four consecutive years ending with the academic year in which the candidate appeared for the relevant qualifying examination or to his residence in the local area for four consecutive years ending with the academic year in which he appeared for the relevant qualifying examination. The second criteria for

acknowledging a candidate to be a local candidate is to find out if

(i) he has studied in an educational institution in the State for a period of not less than seven consecutive years or

(ii) he has resided in the State during the whole period of seven years ending with the academic year in which he appeared for the relevant qualifying examination.

(5) Paragraph-3 of the Presidential Order identified 7 districts, namely Srikakulam, Visakhapatnam, West Godavari, East Godavari, Krishna, Guntur and Prakasam as the local area in relation to Andhra University and Nagarjuna University. The districts of Adilabad, Hyderabad, Karimnagar, Khammam, Mahaboobnagar, Medak, Nalgonda, Nizamabad and Warangal were regarded as local area in relation to Osmania University and Kakatiya University. Similarly, the districts of Anantapur, Kadapa, Kurnool, Chittoor and Nellore were identified as local areas in relation to Sri Venkateswara University.

45. Though paragraphs-5 and 6 of the Presidential Order created a reservation of 85% of the available seats in (i) the educational institutions listed in the Schedule,

(ii) the five Universities named in para-5(i) namely Andhra University, Nagarjuna University, Osmania University, Kakatiya University and Sri Venkateswara University and

(iii) those three Universities named in para-2(1)(f) namely Andhra Pradesh Agricultural University, Jawaharlal Nehru Technological University and Nizams Institute of Medical Sciences, the Presidential Order was construed by successive Governments as well as this Court, for the past nearly four decades to mean that even the remaining 15% of the seats were intended to be filled up only from the students of one or other local area within the State itself. Such a scheme was first thought of by a Government Order in G.O.(P).No.646, 10-7-1979, under paragraph-11 of which, the Government listed out the candidates who will be treated as nonlocals, to be eligible for being considered for the remaining 15% unreserved seats.

46. In other words, the Presidential Order was construed to create an iron wall in respect of 85% of the seats in the aforesaid institutions and Universities making them available exclusively for the locals. The hope or expectation that at least the remaining 15% which were not reserved by the Presidential Order, was available to students from all over the country, was turned into a myth by G.O. (P). No.646, dated 10-7-1979.

47. Fortifying what was contained in G.O.(P).No.646, dated 10- 7-1979, the Government of Andhra Pradesh also issued a set of rules known as Andhra Pradesh Regulation of Admission of Students into Medical Colleges/Dental Colleges Rules, 1983. These Rules were issued in exercise of the power conferred by Section 15(1) of the Andhra Pradesh Educational Institutions (Regulation of

Admission and Prohibition of Capitation Fee) Act, 1983. Rule 7(9) of those Rules laid down certain criteria for the determination of who could be construed as a non-local, so as to be eligible for admission even as against 15% of unreserved seats.

48. Thus the Presidential Order blocked 85% of the seats in all educational institutions in the State only to locals. The remaining 15% which were purportedly left unreserved by the Presidential Order, were blocked effectively by G.O.(P).No.646, dated 10-7-1979 and Rule 7(9) of the Andhra Pradesh Regulation of Admission of Students into Medical/Dental Colleges Rules, 1983. In other words, 100% of the seats in all educational institutions in the State of Andhra Pradesh got completely blocked only for the localites.

49. Unfortunately, a Bench of this Court affixed its seal of approval to such balkanisation, in a decision in State of Andhra Pradesh v. Kannan Narayanan (AIR 1985 AP 343). In that case, a student who passed Intermediate examination from a school in Jammu and Kashmir sought admission to MBBS Course in one of the colleges affiliated to one of the State-wide Universities in the State of Andhra Pradesh, under the 15% of seats left as unreserved. But a Division Bench of this Court rejected his claim on the ground that a person who did not satisfy the criteria laid down in G.O.(P). No.646 and the 1983 Rules could not even be considered as a non-local, so as to be eligible to seek admission as against the 15% unreserved seats.

50. As on date, the law laid down by the aforesaid decision of the Division Bench of this Court in State of Andhra Pradesh v. Kannan Narayanan appears to hold the field. In fact Mr. A.Prabhakar Rao, learned counsel appearing for Dr. Kaloji Narayana Rao University of Health Sciences and Mr. Taddi Nageswara Rao, learned counsel appearing for Dr. NTR University of Health Sciences, confirmed with a lot of conviction that as a consequence of (i) the Presidential Order, (ii) G.O.(P).No.646, (iii) Rule 7(9) of the 1983 Rules and (iv) the decision of the Division Bench in State of Andhra Pradesh v. Kannan Narayanan, no student from any other part of this country can be admitted to any course of study in any of the Statewide Institutions or State-wide Universities within the States of Telangana and Andhra Pradesh and that the Universities have been ensuring the same for the past 40 years.

51. As a matter of fact, Private Unaided Medical Colleges found it hard to accept this 100% reservation, since such reservation created craters in their coffers. Since it is human nature that any social philosophy that offends economic interests will not be accepted, the Private Unaided Professional Colleges sought to admit students belonging to other States at least under the Management quota, which is termed as "Category-B seats" in these States. But that attempt was also scuttled by a Division Bench of this Court in J.Sameeran v. Andhra Pradesh State Council for Higher Education . It was held in the said decision that all private professional colleges in the State including minority educational institutions are subject to the control of the State Government within the

meaning of para-9 of the Presidential Order and that therefore the reservation created by the Presidential Order would apply even to the seats under the Management quota.

52. The net result of (i) the Presidential Order,

(ii) the executive fiat,

(iii) the statutory rules and

(iv) judicial pronouncements is that the educational institutions and Universities in the States of Andhra Pradesh and Telangana need not admit a student hailing from the other parts of the country and the prohibition is total.

53. So long as this prohibition was convenient and when the students of the State were pitted only against the students from the other States, the seriousness of the problem was not realised. But today, the orders of cancellation of admission dated 18-8-2017 issued by the National Board of Examinations have given a wake up call, in which the students from the same States are pitted against each other, one group being a direct beneficiary of the Presidential Order and the other becoming a victim of the very same Presidential Order.

54. Having thus seen the history of evolution of Article 371D and the several twists and turns given to the same by Government Orders, statutory rules and judicial precedents, let us now see the decisions of the Apex Court, on which the claim under Article 371D is sought to be sustained. March of law with regard to admission to Super Specialty Courses vis-a-vis Article 371D:

55. In *Dr. Jagadish Saran v. Union of India*, a student, who was denied admission to a Post-Graduate course in the Delhi University, on the basis of reservation of 70% of the seats to the graduates of the same University. While dealing with the challenge under Article 32 of the Constitution, the Supreme Court pointed out in Para-16 of the report that the primary imperative of Articles 14 and 15 is equal opportunity for all across the nation to attain excellence and that this has borne relevance to our times when the country is gradually broken up into fragments by narrow domestic walls in politics, economics and education. In paragraph 44 of the report, the Supreme Court held as follows: ".....Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral courses in specialized subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral....."

56. In *Dr. Pradeep Jain v. Union of India*, the very question that arose before a 3-Member Bench of the Supreme Court was whether consistently with constitutional values, admissions to an institute on higher learning situate in a 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. After quoting with approval the decision in *Dr. Jagdish Saran*, the Supreme Court to some extent approved reservation or preference for persons from a backward region within a State. But the same was done in *Dr. Pradeep Jain*, only in so far as admission to Undergraduate Medical Courses were concerned. This can be seen from paragraph 21 of the report in *Dr. Pradeep Jain*.

57. But in so far as admission to Postgraduate Medical Courses are concerned, the Supreme Court made it clear in Para 22 of the report in *Dr. Pradeep Jain* that excellence cannot be allowed to be compromised by any other considerations, because that would be detrimental to the interests of the nation. In fact, the Supreme Court made a very pertinent observation in paragraph 22, which has proved to be prophetic. The Supreme Court said that "playing with merit, so far as admission to Post Graduate courses are concerned, for pampering local feeling, will boomerang." In fact, the interim order sought by the petitioners in W.P.No. 27162 of 2017 on the basis of Article 371D has actually boomeranged upon their own brethren of the very States of Andhra Pradesh and Telangana.

58. Interestingly, the decision in *Dr. Pradeep Jain* arose out of a batch of writ petitions and a Civil Appeal arising out of the decision of the Delhi High Court. The Civil Appeal No.6392 of 1983, which was also decided along with the batch of writ petitions in *Pradeep Jain*, was filed by Reita Nirankari. Therefore, the decision rendered on 22-06-1984 in *Pradeep Jain* covered the Civil Appeal filed by Reita Nirankari also.

59. However, Reita Nirankari filed a miscellaneous petition, not by way of an application for review nor by way of a curative petition nor even by way of an application to recall the order, but only to postpone the giving effect to of the decision to the next Academic Year. While disposing of the said application by a one paragraph order, which also came to be reported as judgment in *Reita Nirankari v. Union of India*, the Supreme Court directed that its main judgment should be implemented with effect from the next academic year 1985-86. After saying so, the Supreme Court also granted one more relief, not sought for in the miscellaneous application, by holding that the main judgment will not apply to the State of Andhra Pradesh, in view of special Constitutional Provisions that required independent consideration.

60. But nevertheless it must be remembered that the order passed on 26-07-1984 in the miscellaneous petition filed by Reita Nirankari (9 supra), related only to admission to MBBS course and not to Post Graduate Medical Courses and that too the order was passed on an application for postponement of the effect of the judgment to the next academic year.

61. Despite the fact (1) that the clarification issued in the case of Reita Nirankari on 26-7-1984 was not on an application for review, but on a petition for postponement of the enforcement of the main judgment and (2) that the same related only to admission to MBBS course, a 2-Member Bench of the Supreme Court rejected a challenge to the constitutional validity of Article 371D (2)(b)(iii) and (c) (ii), in *Dr. C. Surekha v. Union of India*, solely on the basis of the clarification issued in *Reita Nirankari*. Though the Supreme Court expressed a doubt in paragraph 5 of the report in *C. Surekha* about what would constitute "available seats", the Supreme Court merely left it to the wisdom of the State and Central Governments to take appropriate action. The observations contained in para-6 of the report in *Dr. C. Surekha* read as follows: ".....Before we part with the case we would, however, like to indicate that the Scheme in *Dr. Pradeep Jain*'s case is, in the opinion of this Court, in national interest as also in the interest of the States. Competition at the national level is bound to add to and improve quality. Andhra Pradesh students on the whole are not at all backward and we are of the opinion that they would stand well on comparative basis. It is for the State and the Central Government, apart from the legal issues involved to decide whether in the general interest of the State, the scheme in the Presidential Order should either be so understood as to permit and assimilate the *Pradeep Jain* principle or should be explained, if necessary, by an appropriate amendment of the "Presidential Order. We would, however, leave it to the respondents to take their decision in the matter. We would not like, therefore, to pronounce on the legal question finally in this case."

62. Closely on the heels of the decision in *Dr. C. Surekha*, the Supreme Court dismissed another writ petition in *Dr. Fazal Ghafoor v. Union of India*, wherein a declaration was sought that all post doctoral seats in all Universities should not have any regional or domicile reservations. Even while dismissing the writ petition the Supreme Court expressed a hope, which goes as follows: "We hope and trust that the Government of India and the State Governments shall seriously consider this aspect of the matter without delay and appropriate guidelines shall be evolved by the Indian Medical Council so as to keep the Super Specialties in medical education unreserved, open and free."

63. Though in its decision in *Sandeep v. Union of India*, the Supreme Court reiterated the very same hope in paragraph 36 of the report and noted that the hope did not materialize, the Medical Council of India, as we have pointed out in the first part of our order, has come up with Regulation 9 and 9-A under the amended Regulations of the years 2010, 2012 and 2017. In other words, we have to test whether the protection granted under Article 371-D, which was recognized in *Reita Nirankari*, *Dr. C. Surekha* and *Dr. Fazal Ghafoor* would still hold in the light of 2017 Amendment to the Medical Council of India Regulations, the legitimacy of which can be traced to the hope expressed in *Dr. Fazal Ghafoor*.

64. Heavy reliance is placed by Mr. Satyam Reddy, learned Senior Counsel for the petitioner in W.P.No.27162 of 2017 and also by Mr. A.Prabhakar Rao, learned

counsel for the University, on the decision of the Supreme Court in Sandeep, to buttress their contention that so long as the Presidential Order issued under Article 371-D remains in force, the reservation of seats to locals in the matter of admission to these Universities cannot but be continued.

65. It is true that in Sandeep, the Supreme Court was concerned with a challenge under Article 32 of the Constitution to the reservation for locals in the States of Andhra Pradesh, Telangana and Tamil Nadu. The challenge was also with particular reference to admission to Superspecialities in Medicine.

66. It is also true that in Sandeep, the Supreme Court took note of the decisions in Pradeep Jain, the order passed in Rieta Nirankari and the decisions in Dr. C. Surekha and Dr. Fazal Ghafoor and eventually dismissed the writ petition. In paragraph-36 of the report in Sandeep, the Supreme Court held as follows: "We have referred to the aforesaid judgments in extenso as learned counsel appearing for the petitioners have laid immense emphasis that there cannot be reservation of any kind in respect of post-graduate or super speciality courses regard being had to the law laid down by many a judgment of this Court. It is urged that the State of Andhra Pradesh and Telangana cannot apply the domicile test only to admit its own students and that too also in respect of 15% quota meant for non-local candidates. We have already analysed the factual score and the legal position. The undivided State of Andhra Pradesh enjoys a special privilege granted to it under Article 371-D of the Constitution and the Presidential Order. The judgments of the larger Bench do not refer to the said Article nor do they refer to the Presidential Order, for the said issue did not arise in the said cases. A scheme has been laid down in the case of Dr. Pradeep Jain (supra) and the concept of percentage had undergone certain changes. In Reita Nirankari (supra), the same three-Judge Bench clarified the position which we have already reproduced hereinbefore. However, in C. Surekha (supra), the Court had expressed its view about the amendment of the Presidential Order regard being had to the passage of time and the advancement in the State of Andhra Pradesh. It has been vehemently urged by Mr. Marlapalle that despite 27 years having been elapsed, the situation remains the same. We take note of the said submission and we are also inclined to echo the observation that was made in the case of Fazal Ghafoor (supra) wherein it has been stated thus:- "In Dr Pradeep Jain case this Court has observed that in Super Specialities there should really be no reservation. This is so in the general interest of the country and for improving the standard of higher education and thereby improving the quality of available medical services to the people of India. We hope and trust that the Government of India and the State Governments shall seriously consider this aspect of the matter without delay and appropriate guidelines shall be evolved by the Indian Medical Council so as to keep the Super Specialities in medical education unreserved, open and free."

67. As rightly pointed out by the learned Senior Counsel appearing for the petitioners in the five writ petitions, two important developments had taken place

after the decision in Sandeep. These developments are: (i) The decision in Sandeep was rendered on 27-10-2015, when the law laid down by the Supreme Court in *Christian Medical College v. Union of India* [(2014) 2 SCC 305], striking down the notifications of the Medical and Dental Councils of India, dated 21-12-2010 and 15-02-2012, was holding the field. In other words, on the date on which the decision in Sandeep was rendered, NEET was not heard of and had already been struck down by the Supreme Court. But by a subsequent order dated 11-4-2016 passed by a 5-member bench in *Medical Council of India v. Christian Medical College*, the decision reported in *Christian Medical College v. Union of India* [(2014) 2 SCC 305] was recalled.

As a consequence, the Regulations of the Medical Council of India, of the years 2010 and 2012 prescribing a common entrance examination has come into force, after the decision of the Supreme Court in Sandeep.

(ii) In paragraph-36 of the report in Sandeep, the Supreme Court reiterated the hope and trust expressed by the bench in *Fazal Ghafoor*. The hope and trust expressed in *Fazal Ghafoor* were to the effect that the Governments and Medical Council of India would evolve suitable guidelines to keep the Superspecialities, unreserved, open and free. This hope had actually fructified and come alive in the form of

(i) Section 10-D of the Indian Medical Council Act and

(ii) a new set of Regulations issued on 10-3-2017 by the Medical Council of India whereby Regulation 9-A providing for common counselling has been inserted.

68. In other words, the Supreme Court showed a great deal of restraint, right from its decision in *Pradeep Jain* in the year 1984 up to the decision in Sandeep in the year 2015 to reservations on the basis of domicile and repeatedly expressed hope and trust. Since a law providing for reservation on the basis of residence was created by the Parliament in the form of Article 371-D, the Supreme Court wanted the law-makers themselves to amend the same. This dream has now come true in the form of (i) Section 10-D of the Indian Medical Council Act and (ii) a new Regulation 9-A of the Medical Council of India Regulations, 2000 inserted by way of Notification dated 10-3-2017.

69. The Regulations dated 10-3-2017 are not challenged before us. Though they are under challenge before the Supreme Court in two writ petitions under Article 32 of the Constitution of India in W.P.(Civil) Nos.261 and 267/2017, those challenges pertain to Minority Educational Institutions. Even for them, the Supreme Court has refused to grant any interim protection, except insofar as MBBS Courses in the States of Andhra Pradesh and Telangana are concerned.

70. Therefore, in the light of the important developments that have taken place after the decision of the Supreme Court in Sandeep, we do not know whether the petitioners in W.P.No.27162 of 2017 can continue to sing the same tune on the chord of Article 371-D.

71. In fact, in *Sankalp Charitable Trust v. Union of India*, the Supreme Court issued positive directions on 28-4-2016 for the conduct of NEET. In paragraph-10 of the order passed on 28-4-2016, the Supreme Court directed that notwithstanding any order passed by any Court earlier with regard to not holding NEET, the order dated 28-4-2016 shall operate. When applications were filed by Private Medical Colleges as well as some States, seeking a modification of the order dated 28-4-2016, the Supreme Court refused to modify the previous order as sought for by the petitioners. Reliance was placed on the decision in *Modern Dental College and Research Centre v. State of Madhya Pradesh*, in which the Court rejected the contention of the Private Medical Colleges including minorities that the conduct of entrance test by the State, violated the right of autonomy of the colleges.

72. Therefore, a host of developments that had taken place after the decision of the Supreme Court in *Sandeep* and a host of orders passed by the Supreme Court after the decision in *Sandeep*, raise serious doubts as to whether in the changed scenario, the two Universities in the States of Telangana and Andhra Pradesh can continue to block 100% of the seats in Post Graduate Medical Courses and Superspecialities only to locals identified by specific regions within the States and non-locals whose nativity could be traced to these two States. This doubt is also fortified by the following factors: (i) Article 371-D, as its history shows, was conceived as a tool for removing regional imbalances within the State of Andhra Pradesh. Article 371-D was not articulated for the purpose of removing any inequalities that the people of Andhra Pradesh suffered qua the people of the other States in the country. Therefore, its application should have been and could be limited only to the removal of the imbalances within the different parts of the States.

(ii) If we have to use a metaphor, we may say that what was intended only to be a partition wall within the house, cannot be transformed into a compound wall and raised to the level of Berlin Wall. The elevation of the protection under Article 371-D to the National level, was never contemplated by the Parliament.

(iii) In fact, Article 371-D actually constitutes an integral component of Part-XXI of the Constitution. As the caption to Part-XXI indicates, the provisions contained therein were intended to be "Temporary, Transitional and Special". What was conceived to be Temporary and Transitional under the 32nd amendment to the Constitution way back in the year 1974 cannot be continued in perpetuity. In fact, the Supreme Court made a captivating observation in para-37 of the report in *Sandeep* that "the said privilege remains unchanged, as if to compete with eternity".

(iv) The Statement of Objects and Reasons for the 32nd Amendment Act, 1973, by which Article 371-D was inserted, indicated as follows:

"When the State of Andhra Pradesh was formed in 1956, certain safeguards were envisaged for the Telangana area in the matter of development and also in the

matter of employment opportunities and educational facilities for the residents of that area. The provisions of Clause (1) of Article 371 of the Constitution were intended to give effect to certain features of these safeguards". (v) Therefore, a statutory power conferred by Parliament for a particular purpose, cannot be allowed to take a dimension completely out of proportion. (vi) As the history of evolution of Article 371-D shows, the original demand made at the time of creation of the State of Andhra Pradesh in the year 1956, was to keep the areas identified as Telangana, completely different from the State of Andhra Pradesh. In fact, at the time of re-organisation of the country on the basis of language, the region which was part and parcel of the erstwhile State of Hyderabad called Telangana area was severed and thereafter merged with the Andhra area, comprising of two regions called (i) Ceded Districts, otherwise known as Rayalaseema comprising of four districts and (ii) Circar Districts comprising of seven districts at that time. The original demand of the people of Telangana was actually to treat them not as integral part of Andhra Pradesh, but as distinct and separate. Instead of conceding to this larger demand, a six-point formula was evolved leading to the insertion of Article 371-D of the Constitution. But the insertion of Article 371-D could not keep the flame of independence of the people of Telangana subdued for more than 40 years. Agitations were held after 2009, eventually leading to the creation of the new State of Telangana under the Andhra Pradesh Re-Organisation Act, 2014. What was perceived as backward regions of the erstwhile combined State of Andhra Pradesh, for the upliftment of which Article 371-D was held out as a fig leaf, has now become an independent State under the A.P. Re-Organisation Act, 2014. Therefore, the larger demand made from 1956 to 1969, which was rejected and in the place of which a smaller benefit was conferred under Article 371-D, has now been granted by the re-organisation of the State. Once a larger demand is conceded, the smaller benefit given as a concession in lieu thereof, would automatically go. (vii) It must be pointed out that under the Presidential Order relating to Recruitment to Posts and Services in the State, the posts were divided into (i) District-wide posts,

(ii) Region-wide posts and

(iii) State-wide posts.

The Presidential Order was not applicable to All India Services. Today, by Section 10-D of the Indian Medical Council Act and by the Regulations of the years 2010 and 2012 and by Regulation 9-A inserted on 10-3-2017, all seats in Post Graduate Medical Courses and Superspecialities have been transformed by law, which is not under challenge, into something like All India Services. Therefore, the Presidential Order and Article 371-D cannot continue to have application to Post Graduate Medical Courses and Superspecialities. Such an interpretation is possible in view of the definition of the expression "available seats" under para-2(a) of the Presidential Order, 1974. Para-2(a) defines "available seats" only to mean the number of seats provided in that course after excluding those reserved for the candidates from outside the State.

Reservations under paragraphs-5 and 6 of the Presidential Order were confined only to available seats. If available seats have been shrunk to zero, by virtue of the prescription contained in the Medical Council of India Regulations, 2000 as amended in 2010, 2012 and 2017, the Presidential Order cannot anymore be applied.

73. As a matter of fact, as rightly predicted by the Supreme Court in Pradeep Jain, a large chunk of students in the States of Andhra Pradesh and Telangana have now become victims of the very benefit for which they fought and got over 40 years ago. If ?x? number of seats are available in all State-wide Educational Institutions and State-wide Universities in the States of Andhra Pradesh and Telangana, the opportunities available in the rest of the country for the eligible students of Andhra and Telangana are many times more than that figure. Therefore, holding on to Article 371-D and the Presidential Order, has today proved to be more of a liability than of an asset.

74. We are conscious of the fact that the continued applicability of Article 371-D and the Presidential Order, are questions of larger import that can be decided in the main writ petitions. This is especially so in the light of the decision of the Supreme Court in Sandeep, which may perhaps have to be tested in the light of the developments that have taken place subsequently, in the form of NEET. Therefore, we have to go back while deciding these miscellaneous petitions, to the most fundamental principles that govern the grant of interim orders in cases of this nature. However good, a prima facie case may be, a person may not be entitled to an interim order, if the benefit that he would gain, far outweighs the hardship caused to innumerable individuals. The interim order passed by us on 17-8-2017 though beneficial to a few individuals, has caused immense hardship to scores of candidates who have secured admission to Superspeciality courses in various institutions through out the country. These candidates are also the children of the States of Telangana and Andhra and hence applying the rule of balance of convenience and irreparable hardship, the interim order passed on 17-8-2017 is liable to be vacated.

75. Accordingly, the interim order passed in W.P.M.P. No.33741 of 2017 in W.P.No.27162 of 2017 is vacated. The respondents are free to make allotment through common counselling at the National level even for the seats in the medical colleges affiliated to the two Universities in two States. As a consequence, the respondents are directed to withdraw the orders dated 18-8-2017 by which allotments granted to the petitioners in the other writ petitions were cancelled. They may be allowed to join the courses for which they were granted admission. No costs.

76. The Registry is directed to post the writ petitions for final hearing on 11-9-2017. The parties are directed to complete the pleadings within that time.