
(1994) 07 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2817 of 1994

Dr. B. Sudhakar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-07-1994

Acts Referred:

Constitution of India, 1950 — Article 133, 14, 15, 15(4), 16
General Clauses Act, 1897 — Section 13, 13(2)
Income Tax Act, 1922 — Section 16, 24

Citation : AIR 1995 AP 86 : (1994) 3 ALT 1

Hon'ble Judges : Syed Shah Mohammed Quadri, J;P. Venkatarama Reddi, J;B.S. Raikote, J

Bench : Full Bench

Advocate : G. Raghuram, for the Appellant; P. Innayya Reddy, Govt. Pleader for Gen. Admn. Dept., S. Rama Murthy Reddy and M.V. Ramana Reddy, for the Respondent

Judgement

Mohammed Quadri, J.—Doubting the correctness of the judgments in Dr. Fazal Ghafoor v. Principal, Osmania Medical College, Hyderabad (1988) 2 ALT 227, Dr. K. Ashok Kumar v. University of Health Sciences (1988) 2 APLT 463 and B. Ramesh Vs. University of Health Sciences, Vijayawada and others, on the question of interpretation of paragraph 5 of the Andhra Pradesh Educational Institutions (Regulstion of Admission) Order, 1974 (for short "the Presidential Order") our learned brother S. Parvatha Rao, J., referred the Writ Petition to a Division Bench for reconsideration of the decisions in the said cases by his Order dated February 23, 1994. On March 4, 1994, the Division Bench consisting of our learned brother A. Lakshmana Rao and S. Dasaradha Rama Reddy, JJ., agreed with the view expressed by the learned single Judge and referred the Writ Petition for consideration by a Full Bench and thus this Writ Petition has come up before us.

2. The University of Health Sciences and the Principal, Osmania Medical College, Hyderabad -- Respondents 3 and 4 respectively issued notification inviting

applications for admission to various super-speciality courses including D.M. (Nephrology) (Second P. G. Course) from eligible candidates in January, 1994. In response to the said notification, the Writ petitioner as well as some other candidates applied for admission to D.M. (Nephrology). This course was introduced by providing one seat in Osmania General Hospital from 1990. An entrance examination was conducted for selection and admission of candidates to super-speciality course including the said course. The petitioner and the fifth respondent, among others, appeared for the examination; whereas the petitioner secured the first rank, the fifth respondent secured the third rank. The successful candidates were asked to appear for selection on February 21, 1994 and the classes for the said courses were scheduled to commence from March 1, 1994. The grievance of the petitioner is that in view of the Presidential Order, the said seat in D.M. (Nephrology) was treated as reserved for the students of the local area and allotted to the fifth respondent who is a local candidate in the Osmania University local area and the petitioner was thus denied the seat as he is non-local in that area, so he filed this Writ Petition praying for a Writ of Mandamus declaring that the action of respondents 1 to 3 in treating the seat as earmarked for selection from out" of local candidates in Osmania University local area under paragraph 5 of the Presidential Order, as arbitrary and ultra vires Arts. 14 and 371D of the Constitution; that the sole seat in D.M. (Nephrology) is available to all the candidates irrespective of their local status on the basis of rank obtained in the entrance examination, and for a further declaration that paragraphs 2(1) (a), 5 and 6 of the Presidential Order insofar as they apply to super-speciality course in the Medical Colleges of Andhra Pradesh, are ultra vires Article 371D of the Constitution and subversive of public interest and for a consequential direction to allot the seat to him.

3. Mr. G. Raghuram, the learned counsel for the petitioner, vehemently contended that on its phraseology and the historical background in which it came to be passed, paragraph 5 of the Presidential Order should be so construed as to mean that for admission in super-speciality courses merit alone should count but the interpretation placed by Division Benches of this Court on paragraph 5 of the Presidential Order in Dr. Fazal Ghafoor's case (1988 (2) ALT 227) (supra), Dr. K. Ashok Kumar's case (1988 (2) ALT 463) (supra) and B. Ramesh Vs. University of Health Sciences, Vijayawada and others, completely ignores this aspect as such it is against the public interest and wholly untenable in view of the express wording of the proviso appended to that para and that such interpretation results in denial of equal opportunity to candidates of other regions of the State. He argued that a sole seat in any super-speciality course is not within the ambit of the said para. Alternatively, he contended that paragraph 5 is itself ultra vires Article 371D and as such unconstitutional and that it may be so declared.

4. Of the contentions raised before us, we shall first consider the question of interpretation of paragraph 5 of the Presidential Order which is the main contention and which is the basis of reference of this case to the Full Bench.

5. Before dealing with the aspect of interpretation of para 5 of the Presidential Order, it would be useful to remind ourselves of the historical background in which Article 371D came to be inserted in the Constitution and the Presidential Order came to be made. The erstwhile State of Hyderabad comprised of three linguistic regions called Telangana, Maratwada and Karnataka. After reorganisation of the States in 1956, the Maratwada region formed part of Maharashtra State; the Karnataka region formed part of Karnataka State and the Telangana region became part of the State of Andhra Pradesh. At the time of formation of Andhra Pradesh, certain safe- guards were envisaged for the Telegana area in the matter of development and in the matter of employment opportunities and the educational facilities. Various steps taken to give effect to the assurances and the safeguards could not yield the desired results; on the contrary they gave cause for dissatisfaction sometimes in Telangana area and sometimes in the other areas of the State, which led to public agitations and disruption of normal life in the State. The leaders of the Andhra Pradesh State made concerted efforts to analyse the factors giving rise to the dissatisfaction and evolved a formula with a view to achieving fuller emotional integration of the people of Andhra Pradesh; for promoting accelerated development of the backward areas of the State and for providing equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public services. This formula is commonly known as six point formula. To give effect to this formula, a Bill was introduced in the Parliament for enacting the Constitution (32nd Amendment) Act, 1972. By this Act, Articles 371D and 371E were inserted in part XXI of the Constitution.

6. Clause (1) of Article 371D empowers the President to make an order and having regard to the requirements of the State as a whole, to provide 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 it is worth noticing that for that purpose different provisions may be made for various parts of the State. It is, inter alia, particularised in Clause 2 thereof that the President may specify in his order 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 and also specify the extent to which, the manner in which and, the conditions subject to which, preference or reservation shall be given or made 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 University or educational institution, in the matter of admission to any such Univesity or other educational institution. In exerecise of power conferred under clauses 1 and 2 of the Article 371D, the President issued "The Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (referred to as the "Presidential Order") on July 3, 1974 which came into force from July 1, 1974. Paragraph 2 of the Presidential Order defines the expressions used therein. Paragraph 3 specifies the local area for purposes of admission to the Universities and the educational institutions other

than State-wide University or State-wide educational institution. The State is divided into three local areas for the purpose of admission to various courses offered in the Universities or other educational institutions subject to the control of the State Government. They are: (1) Andhra University local area; (2) Osmania University local area; and (3) Sri Venkateswara University local area. The Universities and the educational institutions subject to the control of the State Government are divided into two categories, viz., (1) State-wide Universities and educational institutions and (2) non-State-wide Universities and educational institutions. The expression "local candidates" is defined for purposes of admission to any course of study in relation to a local area in para 4. Now we come to paras 5 and 6 of the Presidential Order which deal with reservation of seats for local candidates in non-Statewide Universities and educational institutions and State-wide Universities and educational institutions respectively. The expression "State-wide Universities" is defined in para 2(f) of the Order and "State-wide educational institution" is defined in para 2(e) and such institutions are specified in the schedule to the Presidential Order. We shall revert to them presently. Paragraph 7 says that if a local candidate in respect of a local area is not available to fill up any seat reserved or allocated in favour of local candidate in respect of that local area, that seat will have to be treated as unreserved. Paragraph 8 empowers the President to require the State Government to issue directions; Overriding effect is given to the provisions of the Presidential Order over any statute, ordinance, rule or regulation in respect of admissions to any University or to any other educational institutions which are subject to control of the State Government by paragraph 9. Paragraph 10 declares that the provisions of the Presidential Order shall not affect the operation of reservations in favour of women, socially and educationally backward classes, etc., and scheduled castes and scheduled tribes insofar as they are not inconsistent with the Order. The following schools/courses: (a) primary or secondary school, (b) correspondence courses provided by any other University or other educational institution and (c) part-time courses of study provided by any other University or other educational institutions for the benefit of the employed persons, are excluded from the operation of the Presidential Order by paragraph 11.

7. Adverting to paragraph 5 to the Presidential Order, which is the centre of controversy in this Writ Petition, it may be noticed here that it was construed by a Division Bench of this Court in Dr. Fazal Ghafoor's case 1988 (2) ALT 227 (supra). Dr. Fazal Ghafoor had secured the first rank in entrance examination conducted for admission to super-specialities in the academic year, 1986-87. He opted for D.M. (Neurology) which was notified as available in the Nizam's Institute of Medical Sciences (*). He was denied admission on the ground that he was a non-local in Osmania University area. Justice P.A. Choudhary who dealt with the writ petition filed by Dr. Fazal Gaffor challenging the action of the respondents therein in denying him admission in D.M. (Neurology), rejected all the contentions raised by the petitioner including the plea that the rule of

reservation in super-specialities was violative of Article 14 of the Constitution holding that the reservation was under Article 371D, a special provision for the State of Andhra Pradesh, but not under Article 15(4) of the Constitution, so the judgments rendered under and observations made with reference of Article 15(4) of the Constitution had no application to a case under Article 371D of the Constitution and thus dismissed the writ petition. It was urged before the Division Bench, on appeal against the judgment of the learned single Judge, that where there was only one available seat in any super-speciality in a given local area, there should be no reservation in favour of local candidates and that it should be treated as an unreserved seat. Repelling that contention, the Division Bench speaking through Justice Jeevan Reddy (as he then was) observed that the said argument was based on proviso to sub-rule (2) of Rule 5 and that the Bench was not prepared to read the proviso as saying that where there was only one seat available in a given course in a given local area, it should be treated as an unreserved seat because such an interpretation would amount to divorcing the proviso from its context and reading it as an independent provision whereas the proviso must be read in its proper context and also having regard to underlying object and purpose of the Presidential Order.

8. The said para of the Presidential Order again came up for consideration in Dr. K. Ashok Kumar's case 1988 (2) ALT 463 (supra) before the same Division Bench on reference of a writ petition by a learned single Judge. There also the question arose in the context of admission to the very same seat in super-speciality, D. M. (Neurology) in the Osmania Medical College, in the year, 1986-87. A candidate, the fifth respondent therein, who was not a local candidate in Osmania University local area was admitted to the course ignoring the claim of the petitioner therein who was a local candidate in the Osmania University local area. This action of the Health University was questioned in that Writ Petition. The stand of the University, however, was that since the seat in question was the only seat available in D.M. (Neurology), it cannot be reserved for the local candidates of Telangana area but must be made available to the candidates of all the three local areas in the State. The Bench held that the plea was totally untenable and mis- placed and that to say that the seat in Osmania Medical College was reserved for local candidates of all the three local areas put together, was some thing which was not borne out by any provision of the Presidential Order. On construction of the proviso to para 5 of the Presidential Order which says that there shall be atleast one unreserved seat, the Bench reiterated the view taken by it in Dr. Fazal Ghafoor's case and opined that the proviso was a proviso to sub-para (2) and not a proviso to sub-para (1) and that it only meant that while rounding off the fraction to one, under sub-para (2), it must be ensured that at least one seat is unreserved and that the proviso could not be read as saying that where only one seat is available in a particular course of study, it should be treated as unreserved.

9. In B. Ramesh Vs. University of Health Sciences, Vijayawada and others, , Dr. Ramesh was seeking admission to M.Ch. (Genito Urinary Surgery), a super-

speciality. That case was also referred to a Division Bench by a learned single Judge. The Division bench of this Court, of which one of us, (Syed Shah Mohammed Quadri, J.) was a member, observed that treating the only seat in Andhra Medical College as unreserved under paragraph 5 of the Presidential Order appeared to be against the judgment of the Division Bench in Dr. Fazal Ghafoor's case 1988 (2) ALT 227 (supra).

10. In G. Nagasaina Rao v. Govt. of Andhra Pradesh (1992 (2) ALT 539), the question urged before our learned brother Parvatha Rao, J. was whether reservation of the only available seat in M.Ch. (Cardio Thoracic Surgery) in the Gandhi Medical College, which is a non-State-wide educational institution, in favour of a local candidate and its allotment to a local candidate (the third respondent therein), irrespective of the rank secured by him, in preference to the petitioner who secured higher rank than him, under para 5 of the Presidential Order, was illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India. The learned Judge held that the Gandhi Medical College, though affiliated to the University of Health Sciences, was not a State-wide educational institution and as it was subject to control of the State Government that seat in M.Ch. (Cardio Thoracic Surgery) would be subject to the reservation under para 5 of the Presidential Order as such the action of the University in allotting that seat to the third respondent therein in preference to the petitioner therein, was valid. On appeal W. A. No. 563 of 1992, against the judgment of the learned single Judge, a Division Bench consisting of Sivaraman Nair and As Gopal Rao, JJ. after referring to the judgments in Dr. Fazal Ghafoor's case 1988 (2) ALT 227 (supra), Dr. Ashok Kumar's case 1988 (2) ALT 463 (supra) and B. Ramesh Vs. University of Health Sciences, Vijayawada and others, , confirmed the judgment under appeal taking the view that the petitioner therein was not entitled to admission on the basis of merit without regard to local reservation.

11. The question that concerns us here is : What is the proper construction of para 5 vis-a-vis the proviso ?

12. The principles Governing the interpretation of statutory provisions are too well settled to warrant any elaborate discussion and copious references from authoritative text books and from various decisions of the English Courts or our Supreme Court. However, it will be useful to refer to a few judgments of the Supreme Court in which these principles are succinctly laid down.

13. In Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , speaking for the Constitution Bench, Sarkaria, J. while dealing with the provisions of Clauses 3 and 4 of Article 371D of the Constitution and the Andhra Pradesh Administrative Tribunal Order, 1975, made by the President in exercise of his powers under the said constitutional provisions, stated the principle thus (Para 63 of AIR):--

"The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made

it" (Coke). Normally, such intent is gathered from the language of the provision. If the language of the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation".

14. In *I.T. Commr. v. J. H. Gotla*, the Supreme Court had to consider the ambit of Sections 24 and 16 of the Income Tax Act, 1922; elucidating the principles of interpretation of a statutory provision, Sabyasachi Mukherji, J. (as he then was) observed in para 46 of the Judgment as follows:--

""Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of disctionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their mean- ing."

15. In *Kehar Singh and Others Vs. State (Delhi Administration)*, , Jagannatha Shetty, J, in his concurring judgment made the following observation in regard to the old approach as well as the modern approach adopted by the Court on the question of interpretation of the statute (at p. 1945 of AIR) :--

"Before I come to Consider the arguments put forward by each side, I venture to refer to some general observations by way of approach to the questions of construction of statutes. In the past, the Judges and lawyers spoke of a "golden rule" by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust result which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the act and not for the Court to intervene by its innovation.

During the last several years, the "golden rule" has been given a go-by. We now look for the "intention" of the legislature or the "purpose" of the statute. First we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences."

16. In our view, it may not be necessary to multiply the decisions on this aspect.

17. The rule with regard to construction of a proviso with which we are faced in this case, is that its interpretation is affected by the main clause, to which it is tacked; In "Statutory Interpretation" by Cross (at page 106), the reason given for this rule is:--

"The reason why the main clause affects the construction of the proviso is that there is a presumption based on the ordinary use of language that the scope of the proviso is affected by the scope of the main clause."

The effect of a proviso is stated [in "Crane on Statute Law" seventh edition at page 218 as follows:--

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso could be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

18. The House of Lords enunciated the principle regarding construction of a "Proviso" in the leading case of *Thompson v. Dibdin*. 1912 AC 533:--

"a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso... It is not a separate or independent, enactment. The words are dependant on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context."

19. It would be useful to refer to the observation of the Supreme Court in *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, on this aspect which read as follows (at p. 717):--

"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the. main enactment a portion which, but for the proviso would fall within the main enactment."

20. In *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, Subba Rao, J. (as he then was) speaking for the Supreme Court pointed out the function of the proviso to a statute in these terms:--

"So far as the proviso to a statute is concerned, the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would fall within the purview of enactment."

21. We may observe that in construing a statute the distinction between the meaning of words and their legal effect should not be lost sight of. Quoting Lindley L.J. Craies in his Treatise "Craies on Statute Law" seventh edition page-64 points out the distinction between them:--

"The meaning of words I take to be a question of fact in all cases The effect of the words is a question of law."

22. From the above discussion it follows that The approach of the Court while interpreting a constitutional provision or a statute or any other legislation whether primary or subordinate, should be to discover the intention of the Legislature and to give effect to it. The intention has to be gathered first by ascertaining the meaning of the words used in the provisions in question and then noticing their legal effect. If the words used are clear and unambiguous, they present no difficulty; however if they are imprecise, protean or capable of more meanings than one, the court has to take aid from legislative history, basic scheme and frame-work, of the Statute and purpose and object sought to be achieved by the Statute in question and give a purposeful interpretation so as to advance the intention of the legislature thus gathered by avoiding inconsistency, repugnancy, absurdity or injustice, if any, arising from the phraseology of the legislation. In construing a "Proviso" which is more often appended to an enactment, the general principle is that its meaning and scope are dependent on the principal enacting provision to which it is tacked as a "proviso" and that it cannot be taken as a separate or independent enactment to be read a divorce from its context unless the context itself compels such a treatment of the proviso.

23. Keeping these principles in mind, we shall proceed to interpret para 5. of the Presidential Order. However, having regard to contention raised before us, we think it appropriate to extract here paras 5 and 6 of the Presidential order.

24. A plain reading of sub-paragraph (1) of paragraph 5 shows that it enjoins that admissions to eighty-five per cent of the available seats in every course of study provided by the Andhra University, Nagarjuna University (Commonly known as Andhra University local area); the Osmania University, the Kakatiya

University (commonly known as the Osmania University local area) and Sri Venkateshwara University (commonly known as the S.V. University local area) or in any other educational institution (other than a State-wide University or educational institution) which is subject to the control of the State Government (for the sake of convenience we shall call them as non-State wide Universities and non-State-wide educational institutions), shall be reserved in favour of the local candidates in-relation to each of the above local areas. Sub-paragraph (2) of Paragraph 5 says that while determining the number of seats to be reserved in favour of the local candidates under sub-paragraph (1), any fraction of a seat shall be counted as one. To this sub-paragraph after ":", a proviso is added which enjoins that there shall be at least one unreserved seat. Literally or grammatically, the proviso is appended to sub-paragraph (2), not to sub-paragraph (1); it is also not a proviso to paragraph 5 as a whole. Thus paragraph 5 postulates reservation of eighty-five per cent of the available seats in every course of study provided by any non-State-wide University or educational institution which is subject to the control of the State Government in favour of local candidates in relation to local area in respect of such University or, educational institution. In arriving at the number of seats to be reserved out of the available seats in favour of local candidates, any fraction of a seat has to be counted as one but at least one seat has to be kept as unreserved. The meaning of this paragraph is very clear and there is no ambiguity, no absurdity or injustice which flows from this meaning, keeping the expression "available seats" in view.

25. The following statement contains illustrations worked out by us, which elucidates the operation of sub-paragraph (1) and (2) of paragraph 5 and the effect of the proviso. While analysing the provisions of paragraph 5, we are not unmindful of the rule that to understand a proviso of the statute it cannot be read in parts and that the entire provision has to be read as one unit:--

PARA 5 : Reservation in non-State-wide Universities and educational institutions : ?

PARA 6: Reservation of State-wide Universities and State-wide educational institutions : ?

(1) Admission to eighty-five per cent of the available seals in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide 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.

(1) Admissions to eighty-five per cent of the avail-able seats in every course of study provided by a State-wide University or State-wide educational institution shall be reserved in favour of, allocated, among the local candidates in relation to the local areas specified in sub-paragraph (1), sub-paragraph (2) and sub-

paragraph (3) of paragraph 3, in the ratio of 42 : 36 : 22 respectively. (Vide G.O. Ms. No. 816 G.A. SPE-B) dated 26-1-1976 and G.S.R. 898 ? (E), dated 25th November, 1976, Government of India).

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

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

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

Provided that there shall be at least one unreserved seat.

Provided that there shall be at least one unreserved seat.

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

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

PARAGRAPH 5

No. of available seals Sub-paragraph (1) ?85% (Reserved for local) Sub-paragraph (2)

Counting/the fraction of a seat as one

Effect of the proviso

Reserved (local) Un-reserved Reserved Un-reserved

(1) (2) (3) (4) (5)

1. $1 \times 85/100 = 0.85$ 1 ? nil? ? ?

2. $2 \times 85/100 = 1.70$ 2 ? nil? 1 1

3. $3 \times 85/100 = 2.55$ 3 ? nil? 2 1

4. $4 \times 85/100 = 3.40$ 4 ? nil? 3 1

5. $5 \times 85/100 = 4.25$ 5 ? nil? 4 1

6. $6 \times 85/100 = 5.10$ 6 ? nil? 5 1

7. $7 \times 85/100 = 5.95$ 6 1 6 1
8. $8 \times 85/100 = 6.80$ 7 1 7 1
9. $9 \times 85/100 = 7.65$ 8 1 8 1
10. $10 \times 85/100 = 8.50$ 9 1 9 1
11. $11 \times 85/100 = 9.35$ 10 1 10 1
12. $12 \times 85/100 = 10.20$ 11 1 11 1
13. $13 \times 85/100 = 11.05$ 12 1 12 1
14. $14 \times 85/100 = 11.90$ 12 2 12 2
- 1995 A.P./7 III G? 20
15. $15 \times 85/100 = 12.75$ 13 2 13 2
16. $16 \times 85/100 = 13.60$ 14 2 14 2
17. $17 \times 85/100 = 14.45$ 15 2 15 2
18. $18 \times 85/100 = 15.30$ 16 2 16 2
19. $19 \times 85/100 = 16.15$ 17 2 17 2
20. $20 \times 85/100 = 17.00$ 17 3 17 3

26. It is only when the available seats are 20 or multiple of 20 that there will be no fraction of a seat in arriving at 85% of the available seats viz., seats reserved for each local area. So we have worked out the reserved seats for candidates of each local area and the unreserved seats under paragraph 5 with reference to situations arising due to variation of seats between 1 and 20.

27. In the statement column No. 1 shows the number of available seats, column No. 2 indicates 85% of the available seats, column No. 3 gives the number of seats reserved under sub-paragraph (1) by counting the fraction as one and the number of unreserved seats thus arrived at is noted in column No. 4 and column 5 points out the effect of the proviso on the reserved and unreserved seats.

28. From the above statement of illustrations, it can be noticed that 85% of the available seats between 1 and 19 will always contain a fraction of the seat; it is only when the number of available seats are 20 that under sub-paragraph (1), the reserved seats for a local area, 85% of 20, will come to 17 seats. Sub-paragraph (2) which is explanatory of sub-paragraph (I), enjoins that while determining the number of seats to be reserved in favour of the local candidates under sub-paragraph (1), any fraction of a seat shall be counted as one. So counting the fraction of a seat mentioned in column (2), we arrive at figures stated in column (3), we notice that corresponding to the number of available seats between 1 and 6, all the available seats will have to be counted as reserved seats under sub-paragraph (I), and no seat is left as unreserved as can

be seen from column (4), when the number of available seats varies between 7 and 13, number of reserved seats will vary between 6 to 12 but only one seat will be available as "unreserved seat". So also, when the number of available seats varied between 14 and 19, the number of unreserved seats would be only two. It is only when the number of available seats are 20, as has been noticed above, there will be no fraction of a seat and sub-paragraph (2) will not come into operation. What is evident is that when the number of available seats is 13, as against 12 reserved seats under sub-paragraph (1) being 85% of the available seats, only one seat will be available as unreserved. This is the literal interpretation of the two sub-paragraphs of paragraph 5 of the Presidential Order.

29. How is this position altered by the Proviso? We shall first examine it on the assumption that the number of available seats is more than one as the expression used in paragraph 5 is "available seats", and consider the controversy relating to a single available seat a little later. From the statement, it has been noticed that by operation of sub-paragraphs 1 and 2, when the number of seats vary between 2 and 6, all the seats will be treated as "reserved" and nothing will be available for "unreserved" category; but due to operation of the proviso, one seat out of them will have to be kept as "unreserved"; and when the number of seats vary between 7 and 13 and between 14 and 19, one seat and two seats in the first and the second contingency respectively, will be available for unreserved category; as such in these situations there will be no occasion for application of the proviso. Also, when the available seats are 20, in calculating 85% of those seats there will be no fraction of a seat, so, sub-paragraph (2) has no application. Consequently, there will be no scope for the proviso to come into operation. From the above discussion and the illustrations in the statement, it follows that the proviso applies only in a limited situations -- when the number of available seats varies between 2 and 6, and that it has no application when there are "no reserved seats" as well as when there are "unreserved" from out of available" seats.

30. No coming back to the position where the number of available seats is only one, can it be said that by virtue of the proviso the lone seat should go to the unreserved category?

31. Mr. Raghuram pleaded for an affirmative answer to this question. In his submission, the only available seat, on a true interpretation of the proviso, has to be declared as unreserved. This would mean that the "reserved category" which is entitled to 85% of the number of available seats, should be denied the only available seat and "the "unreserved category which is entitled to only 15% of the available seats, should get that one available seat. We cannot interpret the proviso in the manner the learned counsel for the petitioner wants us to do. The learned single Judge who referred the case, took the view that on the basis of the sub-paragraph (2) of paragraph 5 which provides that any fraction of the seat shall be counted as one subject to the proviso that there shall be at least one unreserved seat, means that eighty-five per cent of that one seat cannot be

reserved in favour of the local candidates as the proviso requires that there shall be one unreserved seat; thus, when there is only one seat in any course of study, it has to be kept as unreserved and that this reasoning would equally apply when there are two seats in a course of study, as 85% of the two seats would be 1.70 which cannot be rounded to two because, as per the proviso, there shall be at least one unreserved seat which means that there shall be one seat reserved for local candidates and the other seat shall be kept unreserved. It is a well established principle that when two interpretations are possible the one which subserves the object of the statute should be preferred. In our view, the proviso ensures that at least one seat is kept as unreserved lest under 85% quota (local) by virtue of sub-paragraph (1) and by the process of counting fracting of a seat as one under sub-paragraph (2), all the available seats shall be treated as "reserved". The proviso does not destroy the main provision relating to reservation of seats for candidates of each local area adumbrated in sub-paragraph (1) and the effect of sub-paragraph (2) relating to Counting of fraction of a seat as one by denying the only available seat to the category which is entitled to 85% (local candidates); it carves out one seat as unreserved seat from out of reserved seats, which but for the proviso would have been included in the reserved seats. This is clearly demonstrated from the above discussion and a perusal of the above statement. The proviso which merely ensures that in the process of any fraction of a seat being counted as one, the unreserved category representing 15% of the available seats is not left without any seat and at least one seat, is available as unreserved, cannot be understood or interpreted to mean that this should be to the execution of or resulting in denial of the only seat to the reserved category (local) representing 85%. of the available seats. We have already noticed that the proviso which is in the nature of exception to sub-paragraph (2) applies only in a limited situations -- when the number of available seats varies between 2 and 6 and carves out one seat which but for the proviso would have been counted as a reserved seat; it has no occasion to operate when number of available seats vary between 7 and 20 in a given case when there are 20 available seats. For the reasons indicated herein, we are unable to agree with the interpretation of the proviso by the learned single Judge with which the referring Bench agreed. We, therefore, hold that the contention that as and when the available seats are 2, because of proviso, one has to be kept as unreserved, so also when available seat is one 85% of one cannot be counted as one and that lone available seat has to be treated as unreserved cannot be accepted and in our considered view, that cannot be presumed to be the intention of the President, particularly, in view of the scheme of Article 371-D of the Constitution.

32. We have noted above that the State is divided into three local areas. The scheme contained in paragraph 5 of the Presidential Order is to reserve 85% of the available seats for the candidates of each local area and leave the balance 15% as unreserved. In the light of the historical background in which Articles 371-D and 371-E were inserted in the Constitution and the Presidential Order

came to be made, it would be reasonable to assume that the Order protects the interest of local candidates of each of the three local areas treating each local area as a Unit - and thus provides equal opportunities to the candidates of the State as a whole which is both in consonance with public interest as well as in accordance with the requirement of providing equitable opportunities and facilities for the people belonging to different parts of the State which is the mandate of Article 371-D. We cannot so construe the provisions of paragraph 5 as to frustrate or defeat the very purpose of the Presidential Order. Now let us elaborate this position. For purposes of paragraph 5, if there is one available seat in each of the three local areas and according to the contention of the petitioner each seat is treated as unreserved, candidates of one local area having better rank in entrance examination will secure admission and no seat will be available for candidates of other two local areas. This, in our view, will perpetuate the mischief which was sought to be remedied and thus frustrate the object of the Presidential Order.

33. There can be no doubt that reservation is anathema to merit in the matter of admission to courses of studies in which there is stiff competition as that alone satisfies the requirement of Article 14 of the Constitution. But just as inequality among equals results in denial of equal opportunities, so also, equality among unequals results in denial of equal opportunities and the concept of equal protection of law becomes a mere concept of philosophy with no practical significance. Therefore, in the interest of the community as a whole, for balancing interests of various groups, categories and regions and for providing equitable opportunities and facilities for the people of different parts of the State to achieve satisfaction of public at large, reservation has to be accepted as a necessary factor, be it on caste basis or regional basis or any other rational basis. This is the underlying object of Article 371-D and the Presidential Order.

34. We shall further dwell on this aspect when we deal with the arguments of the learned counsel for the petitioner based on comparison of paragraph 5 with paragraph 6 of the Presidential Order.

35. It is next urged by Mr. Raghuram that paragraph 5 should not be read in isolation and that it should be read along with paragraph 6. We shall read paragraph 6 here and compare it with the provision of paragraph 5. Sub-paragraph (1) of paragraph 6 enjoins reservation of 85% of the available seats in every course of study provided by the Statewide Universities or State-wide Educational Institutions in favour of the local candidates of Andhra University local area, Osmania University local area and Sri Venkateshwara University local area in the ratio of 42 : 36 : 22 respectively. The proviso added to sub-paragraph (2) excludes all courses of study in which the total number of available seats does not exceed three, from the operation of sub-paragraph (1) of paragraph 6.

36. What Mr. Raghuram argues is that silence in sub-paragraph (1) of paragraph 5 with regard to its exclusion in case the number of available seats any course of study is less than four or only one, has to be understood as a speech by the

President providing for such exclusion. In support of his contention, he relied upon paras in the judgment of the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, .

37. We are afraid we cannot accede to the contention of the learned counsel. It can immediately be noticed that no proviso is tacked to sub-paragraph (1) of paragraph 5 excluding its operation where the number of available seats is less than two, as is found in sub-paragraph (1) of paragraph 6 excluding its application if the number of available seats are less than four. We think that the very fact that the President has provided for exclusion of paragraph 6 when the number of available seats is less than four but has not provided for exclusion of paragraph 5 when the number of seats is less than two, necessarily implies the intention of the President, not to exclude paragraph 5 when the number of available seats is one. Further to a situation like this the maxim "expressum facit cessare tacitum" ("when there is express mention of certain things, then anything not mentioned is excluded") applies. Consequently the contention of Mr. Raghuram cannot be countenanced. The case relied upon by the learned counsel for the petitioner, deals with the implied limitation on the power of the Parliament in amending the Constitution and has no relevance to this point.

38. Sub-paragraph (2) of paragraph 6 and the proviso thereto are identical in terms with the sub-paragraph (2) of paragraph 5 and the proviso thereto. It provides that while determining under sub-paragraph (1) the number of seats to be reserved in favour of the local candidates, any fraction of a seat shall be counted as one and enjoins that there shall be at least one unreserved seat. Here again it is evident that the operation of the proviso is confined to a situation when the fraction of a seat is counted as one in determining the number of seats to be reserved in favour of the local candidates under sub-paragraph (1) and ensures that one seat is kept as unreserved seat. To attract sub-paragraph (1) of paragraph 6, minimum number of available seats should be 4; 85% of 4 will be 3.40 and by virtue of sub-paragraph 2, as fraction of a seat has to be counted as one, the number of reserved seats would have become 4 but for the proviso which enjoins that at least one seat shall be unreserved. This would result in there being one unreserved seat and three reserved seats; which are so allocated among the candidates of the three local areas, under sub-paragraph (3), that the candidates of each local area get one.

39. Construing the provisions of sub-paragraph (2) of paragraph 6 and the proviso thereto harmoniously along with other provisions of paragraph 6, it appears to us that the said sub-paragraph applies only when the number of available seats is more than three (one seat for each local area) and it is only when out of the available seats three local areas get 3 reserved seats under 85% that one unreserved seat is assured under 15%. There is nothing in paragraph 6 which suggests that an unreserved seat should be assured by denying reservation in favour of candidates of local area; indeed such a situation does not arise in the scheme of paragraph 6. As the provisions of sub-paragraph (2) of

paragraph 5 including the proviso are verbatim the same as those of sub-paragraph (2) of paragraph 6, both will have the same meaning and will receive the same interpretation but having regard to the setting in which they occur. It follows that when the available seat; is only one, as no minimum number of available seats is prescribed for application of sub-paragraph (1) of paragraph 5, by parity of reasons, sub-paragraph (2) of paragraph 5 and the proviso thereto will not be attracted and the lone available seat will have to Be reserved for candidates of the local area and the proviso will not have the effect of converting it as an "unreserved seat".

40. How the seats reserved under sub-paragraph (1) have to be allotted among the local candidates in relation to different local areas, is provided in sub-paragraph (3) which is also explanatory to sub-paragraph (1) of paragraph 6. It provides that the fractions of a seat shall be adjusted by counting the greatest fraction as one and, if necessary, the greater of the remaining fractions as another and where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot. The proviso appended to sub-paragraph (3) which evidently deals with allocation of 85% of the available seats, directs that there shall be at least one seat allocated for the local candidates in respect of each local area.

41. It is true that there is no provision in paragraph 5 to the effect that there shall be at least one reserved seat, yet in our view, this does not lead to the conclusion that the only seat should not be treated as reserved seat. Having regard to the operation of the sub-paragraphs (1) and (2) of paragraph 5, there would always be one reserved seat, as such it would be unnecessary to provide that there shall be one reserved seat. But as we have seen from the statement referred to above that when the minimum number of seats are six or less, by operation of sub-paragraphs (1) and (2), there is no possibility of there being an unreserved seat. That is why the proviso mandates that there shall be at least one unreserved seat.

42. Mr. Raghuram, however, had made a two-fold contention that as the expression used in paragraph 5 is "available seats", not "available seat", it does not apply to a course of study where only one seat is available and that it has no application to super-specialities. This contention has no merit for reasons more than one. Firstly, it is a well settled principle that the greater includes the smaller. This has been given statutory recognition in sub-section (2) of Section 13 of the Central General Clauses Act which is made applicable for interpretation of the. Presidential Order by sub-para (3) of para 2 of the Order. (See *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*,). Secondly, the opening words of paragraph 5 viz.

"Admissions to eighty five per cent of the available seats in every course of study..... shall be reserved in favour of local candidates.....".

Clearly indicate that the reservation provided in paragraph 5 applies to admission

to every course of study which includes super-specialities.

43. We have, therefore, no hesitation in coming to the conclusion that where the available seat in any course of study provided by any University or educational institution subject to control of State Government (other than statewide University or Educational institution) that seat has to be reserved for candidates of the local area under para 5(1) and the proviso to sub-paragraph (2) of paragraph 5 cannot be so construed as to treat it as an unreserved seat and this interpretation of para 5 subverses the object of the Presidential Order and Article 371-D of the Constitution as we have already demonstrated that having regard to historical background as well as the phraseology of the said provisions, the intention of the Parliament and also of the President is to give preference to the local candidates of each local area.

44. For the above reasons, we are in agreement with the view expressed by the Division Bench of this Court in *Dr. Fazal Ghafoor v. Principal, Osmania Medical College, Hyderabad* (1988 (2) ALT 227) (supra), *Dr. K. Ashok Kumar v. University of Health Sciences* (1988 (2) ALT 463) (supra) and *B. Ramesh Vs. University of Health Sciences, Vijayawada and others*, , as such they do not require reconsideration.

45. Now we come to the alternative contention of the learned counsel for the petitioner that the Presidential Order is violative of Article 371-D of the Constitution. The power conferred under Article 371-D to make an order, it has been submitted by the learned counsel, is subject to the necessary limitation that it should be to provide equitable opportunities and facilities for the people belonging to different parts of the state having regard to the requirements of the State as a whole, but the Presidential Order as interpreted by this Court, where the number of available seats in a non-state-wide University or educational institution is one, results in inequitable opportunities and facilities for the people belonging to different parts of the State and , therefore, subversive of the constitutional objectives enumerated in clause (1) of Article 371-D, as such the Presidential Order is ultra vires Article 371-D of the Constitution.

46. We may notice here clause 10 of Article 371-D of the Constitution which reads as follows:--

"371-D (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."

47. A perusal of the above noted clause makes it plain that the provisions of Article 371-D and the Presidential Order are insulated from any attack or challenge based on any other provision of the Constitution or any other law for the time being in force. Therefore, it is not open to challenge either Article 371-D or the Presidential Order on the ground that they are violative of Article 14 of the Constitution. The same view is expressed by the Division Bench of this Court in *Dr. Fazal Ghafoor's case* (1988 (2) ALT 227) (supra), with which we respectfully

agree.

48. Paragraph 9 of the Presidential Order also gives overriding effect to the provisions of the Order over any Statute, Ordinance, Rule, Regulation or other order in respect of admissions to any University or to any educational institution subject to the control of the State Government.

49. It may be pointed out here that the constitutional validity of Article 371-D itself was questioned before the Supreme Court in *P. Samba Murthy v. State of Andhra Pra-desh*, AIR 1987 SC 663. The Supreme Court upheld the validity of all the clauses of Article 371-D except clause (5) thereof. The same view is reiterated in *C. Surekha Vs. Union of India (UOI) and Others*, wherein the constitutional validity of Article 371-D and of the Presidential Order was also questioned. The Supreme Court-held (at p. 47, para 4):

"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 (therein) was not entitled to any relief on the ground that Article 371-D militates against the basic structure of the Constitution."

50. In *Fazal Ghafoor Vs. Union of India (UOI) and Others*, , again the constitutional validity of Article 371-D as well as the Presidential Order came under challenge before the Supreme Court. Referring to *C. Surekha Vs. Union of India (UOI) and Others*, (*supra*), the Supreme Court observed (at p. 48, para 2):

"We have already held that there is no merit in the allegation of (that) the Presidential Order or the constitutional provision authorising the issuance of such order is hit by violation of the basic Structure of the Constitution."

51. However, Mr. Raghuram submits that clause 10 does not save the Presidential Order from attack on the ground that it is violative of Article 371-D itself.

52. We have already noted above the historical background in which the constitution was amended and Articles 371-D and 371E were inserted by the Constitution (32nd Amendment) Act, 1973. Clause (1) of that Article vests power in the President to make an Order with respect of the State of Andhra Pradesh providing, in the matter of public employment and in the matter of education, having regard to the requirements of the State as a whole, equitable opportunities for the people belonging to the different parts of the State. Clause (2) of the said Article, *inter alia*, particularises that it may specify any part or parts of the State, which shall be regarded as 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 and to specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made, in the matter Of direct recruitment to posts in any such cadre as may be specified in that behalf in the Order and in the matter of admission to Universities or other educational institutions which are subject to the control of the State Government. From the

above epitoms of Clauses 1 and 2 of Article. 371-D, it is clear that the Presidential Order made in exercise of power conferred thereunder, will have to satisfy the requirements of clauses 1 and 2 of Article 371-D.

53. The Presidential Order as has been noticed above, divided the State into three local areas and Universities and the educational institutions subject to the control of the State Government into two categories --State wide Universities and educational institutions and non-state-wide Universities and educational institutions. In regard to non-State wide Universities and educational institutions subject to the control of the State Government, paragraph 5 of the Presidential Order, reserves eighty-five per cent of the seats in each local area for the local candidates and sets apart 15 per cent as unreserved. In regard to state-wide Universities and educational institutions subject to the control of the State Government, which have been specified in Schedule II of the Order, eighty five per cent of the available seats in such Universities or educational institutions, are reserved in favour of the local candidates of each of the local areas in the ratio of 42 : 36 : 22 respectively.

54. The question whether the Presidential Order is violative of Article 371-D of the Constitution fell for consideration of the Division Bench of this Court of which one of us (Syed Shah Mohammed Quadri J) was a party in B. Ramesh Vs. University of Health Sciences, Vijayawada and others, . The Bench negated the contention that the presidential Order is violative of Art. 371-D. We have already explained the purport of Article 371-D of the Constitution and the substance of the Presidential Order. From a reading of the Presidential Order, it is clear that equitable opportunities have been provided for all the three local areas inasmuch as in the case of non-state-wide Universities or educational institutions, admission to eighty-five per cent of the available seats provided in each University or educational institution are reserved for each local area. Further in the case of State-wide educational institutions, eighty-five per cent of the available seats are apportioned in the three local areas in the ratio of 42 : 36 : 22, It has already been pointed out that Article 371-D requires the President to pass an order 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. It has been already emphasised that clause (1) of Article 371-D authorises the President to make different provisions for various parts of the State. That being the scope of the order that may be passed by the President, the impugned Presidential Order, in our view, satisfies the requirements of Article 371-D, as such, it cannot be said to be ultra vires Article 371-D of the Constitution. The fortuitous circumstance that a seat in any super speciality is created in any local area would not by itself invalidate the Presidential Order as being violative of Article 371-D of the Constitution. In this view of the matter, we are in agreement with the view expressed by the Division Bench in B. Ramesh's case (3rd supra) that the Presidential order is not violative of Article 371-D of the Constitution.

55. We are conscious of the fact that the creation of a seat in super-speciality is not merely an administrative matter under the control of the State Government. It depends on so many factors which include availability of infrastructure and facilities in teaching hospital and fulfilment of the requirements prescribed by the Medical Council of India. As such a direction to create a seat in any superspeciality in each local area cannot be given. However, from a perusal of the definition of state-.wide educational institution in clause (e) of para 2 and the schedule to the Presidential Order, it can be noticed that the only available courses and educational institutions of their kind in the whole state, have been included in the schedule. The President has power to include further courses in the schedule having regard to the spirit of the Presidential Order. We have noticed that earlier, learned single Judge and Division Benches of this Court made observations for the purpose of inclusion of a single available seat in super-specialities in the Schedule and accordingly Cardiology, Cardio-Thoracic Surgery, Neurology, and Neuro-Surgery (super-specialities) were included in the schedule as State-wide educational institutions. No specific plea is taken by the first respondent-Union of India that the question of inclusion of the seat in question in the schedule as a " State-wide institution, was considered by the President. We, therefore, consider it just and necessary to direct respondents 2 and 3 to send appropriate proposal for consideration of the President as to whether the seat in question should be included in the Schedule as a State-wide educational institution for taking a decision in the matter before the commencement of the next academic year. We further direct that as and when it is proposed to introduce a single seat in any super-speciality in any local area in a non- state-wide University or educational institution subject to the control of the State Government, steps should be taken to send proposals for consideration of the President for inclusion of the course of study in the super- speciality proposed to be introduced simultaneously with the proposals initiated for obtaining the approval of the Medical Council of India or any other authority before offering the seat for admission to the eligible candidates.

56. As we have come to the conclusion that if there is only one available seat in any course of study in any University or educational institution in any local area (other than state-wide university or educational institution) subject to the control of the State Government, that seat will have to be reserved in favour of the candidates of that local area in view of the provisions of paragraph 5 of the Presidential Order, we do not find any substance in the complaint of the petitioner that in spite of his rank being higher than that of the fifth respondent, he was not selected for the seat on the ground that he does not belong to Osmania University local area in which the seat in D. M. (Nephrology) is offered. There is no illegality in the action of the respondents in selecting the fifth respondent for the D. M. (Nephrology). This writ petition is, therefore, devoid of merits and accordingly we dismiss the same but having regard to the circumstances of the case, we direct the parties to bear their own costs.

57. Immediately after the pronouncement of this judgment, oral application for

leave to appeal to the Supreme Court is made by Sri G. Raghuram. In our view, no substantial question of general importance, which needs to be decided by the Supreme Court, arises in this case. Oral application for leave is, therefore, rejected.

58 . Order accordingly.