
(2010) 08 MAD CK 0170

In the Madras High Court

Case No : Writ Petition No's. 10803 and 13795 of 2009 and 12700 to 12702, 13130, 13450, 15274 to 15277, 16277, 16278, 16539, 16869 and 16870 of 2010 and M.P. No's. 1, 1, 1, 1, 1, 1, 1, 1, 2, 2, 2, 2, 2, 2, 3 and 3 of 2010

Federation of Puducherry Parents - Students Affected by
Regionwise Reservation

APPELLANT

Vs

Government of Puducherry

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 144, 15, 15(4)
Tamil Nadu Education Rules, 1892 — Rule 5, 8

Citation : (2010) 4 LW 417

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : K.M. Vijayan for K.M. Vijayan Associates in W.P. Nos. 13130, 15274 to 15277, 16869 and 16870 of 2010, R.C. Paul Kanagaraj, in W.P. No. 13450 of 2010, T. Mohan, for M. Ravi, in W.P. Nos. 12700 to 12702 of 2010, Babu Rangasamy, in W.P. Nos. 10803, 13795 and 15933 of 2009, R. Natarajan, in W.P. Nos. 16277, 16278 and 16534 of 2010 and P.V.S. Giridhar, in W.P. No. 16539 of 2010, for the Appellant; M. Ravindran, Addl. Solicitor General of India assisted by D. Sreenivasan, Spl. G.P. and R. Muthukumarasamy for R. Sureshkumar, for impleaded parties, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—All these writ petitions raise a common question and therefore they are heard together and

disposed of by a common order.

2. These batch of cases could be broadly classified in two groups, those cases challenging the decision of the Government of Puducherry in

providing regional reservation for admission to professional decree courses offered by Government sponsored colleges in Union Territory of

Puducherry as unconstitutional and violative of Article 14, 15 & 16 of the Constitution of India and other group of cases challenging the Special

Regional Allocation of seats for Puducherry, Karaikal, Mahe and Yanam Regions.

3. The petitioner in W.P. No. 13130 of 2010 is the Federation of Puducherry Parents-Students Affected by region wise reservation, an

association, registered under the provisions of the Societies Registration Act, 1860. The other writ petitions are by students, who have applied for

admission to the professional decree courses for the academic year 2010-11. The case of the petitioners in all these writ petitions could be

summarized as follows:

The Union Territory of Puducherry consist of four regions of which Puducherry and Karaikal are situated near Tamil Nadu, Yanam situated near

State of Andhra Pradesh and Mahe situated near Kerala State. The Government of Puducherry by G.O.Ms. No. 44, dated 05.04.2010, reserved

21 seats for Karaikal region, 7 seats for Mahe region and 7 seats for Yanam region in the engineering colleges in the Union Territory with a

condition that the candidates in these three regions should have studied in the respective region for atleast three years continuously including the

year in which the candidate appeared for the qualification examination, in order to become eligible to get admitted against the seats reserved for the

three regions, the said Government order came into effect from the academic year 2001-02. Subsequently, by another order in G.O.Ms. No. 99,

dated 10.08.2006, the special allocation in admission to various professional decree courses offered by Puducherry Government sponsored

colleges, for the candidates of Karaikal, Mahe and Yanam regions was made on percentage basis and was fixed at 18%, 4% and 3% respectively.

The Government order also prescribed the criteria to be satisfied for claiming admission under the special regional allocation of seats and the

Government order came into effect from the academic year 2007-08. The Government of Puducherry by G.O.Ms. No. 58, dated 28.04.2010,

constituted a Consultative Committee to review the Regional Reservation on seats reserved in professional decree courses for the candidates of

geographically distributed regions of Karaikal, Mahe and Yanam. The Government order also stipulated the composition of the Consultative

Committee with the Hon''ble Chief Minister, Puducherry as its Chairman.

4. According to the petitioners all of a sudden, the Government announced that the remaining seats, which is approximately 75% after allocation of

seats to Karaikal, Mahe & Yanam regions will be reserved for Puducherry region students only and a Government order to the said effect was

issued in G.O.Ms. No. 65, dated 21.05.2010, which is reflected in the Information Bulletin (hereinafter referred to ""as the Bulletin"") published by

the Centralized Admission Committee (CENTAC) for admission to professional courses in Union Territory of Puducherry for the year 2010-11.

According to the petitioner, the above pattern of reservation restricts the scope of admission to the professional colleges for residents of

Puducherry region and a resident of Karaikal, Mahe or Yanam can never compete for more than the seats allotted for their region; that due to the

said Government order there is 100% reservation and one of the condition to get the benefit of the said reservation is that the parents of the

candidates should have been residing continuously in the Union Territory of Puducherry for atleast for five years and the students should have

studied in the same region for the last three years, immediately preceding the qualification examination (including the year of qualification

examination). This according to the petitioner is violative of Article 15(4) and 15(5) of the Constitution of India. It is stated that a representation

was also given by the petitioner Federation objecting to such reservation, despite such representation since the Government of Puducherry

proceeded with the admission process, the petitioners are before this Court challenging G.O.Ms. No. 99, dated 10.08.2006 and the consequential

Information Bulletin issued by the second respondent approved vide G.O.Ms. No. 65, dated 21.05.2010.

5. (i) The learned Counsel appearing for the petitioner would contend that the regional reservation is bad in law as there is no constitutional

sanction under Article 15(4) and (5) of the Constitution of India that the regional reservation is against the law declared by the Hon''ble Supreme

Court in the case of Minor P. Rajendran Vs. State of Madras and Others, and in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil

Nadu and Others, .

(ii) It is further contended that by providing regional reservation, the respondents have obliterated the social/communal reservation and in the

absence of any approval by the Central Government such reservation is bad in law; that there is no objective standard behind such reservation and

100% regional reservation is constitutional invalid.

(iii) Further, it is contended that reservation for other regions is also improper and by pointing out that in the Mahe region the literacy rate is

95.66% in the Census taken during 2001 and there is absolutely no basis for reserving 25% seats for the said region.

(iv) The learned Senior Counsel by relying upon Clause 2.6 of the Information Bulletin published by CENTAC, which gives the domicile criteria of

Union Territory of Puducherry, would submit that it has in effect nullified the criteria by introducing Clause 6 in Annexure III of the Bulletin and that

the certificate required as per Clause 6 of Annexure III to claim seats under Puducherry/Karaikal/Mahe/Yanam regional allocation is inconsistent.

The students, who have nativity certificate as required under Clause 2.6 of the bulletin are not considered to be domicile of the area because they

do not have a certificate as required under Clause 6 of the Annexure III and this is a glaring inconsistency in the bulletin and there was no such

condition during the previous year i.e., 2009-10.

(v) All that is required to be satisfied to be considered as a domicile of Union Territory of Puducherry is to fulfill any one of the criteria mentioned

in Sub-clause (a) to (f) of Clause 2.6 of the Bulletin and there cannot be any necessity that the candidate should have under-gone academic studies

consecutively for three classes in the region to claim seats under regional allocation. Therefore, the learned Senior Counsel would submit that the

entire process as notified in the Bulletin is illegal and liable to be quashed.

6. The learned Counsels appearing for the students in the other writ petitions would contend that the students were not intimated in advance that if

they pursue their studies outside Puducherry for two years they would not be considered as domicile of Union Territory of Puducherry is illegal and

consequently, the Government order in G.O.Ms. No. 99, dated 10.08.2006 has to be held to be bad in law.

7. The learned Additional Solicitor General appearing for the respondents 1 and 2 submitted that during the previous years regional reservation

was restricted to Karaikal, Mahe and Yanam. Originally the reservation was based on number of seats and subsequently, it was made as

percentage of seats and in view of the peculiar situation in the Union Territory of Puducherry a uniform pattern cannot be adopted as the regions

are distributed and each of the regions is close to a particular state and those regions adopt the Board of Study of the States near to which they are

situated. In other words, it is contended that in respect of Mahe region as it is situated close to Kerala State, the Kerala Education Board pattern is

adopted, similarly for Yanam, Andhra Pradesh Board pattern is adopted and for Karaikal, the Tamil Nadu Board pattern is adopted. The learned

Additional Solicitor General would concede that reservation of 75% for Puducherry region will be deleted from the next year and since the

selection process has already commenced for the current year and counseling for admission to medical colleges having been completed, the

selection for this year should not be distributed.

8. The learned Senior Counsel appearing for the impleaded respondents would submit that the reservation based on domicile or institutional has

been permitted by the Hon"ble Supreme Court and what is prohibited is reservation based on place of birth. That reservation upto 75% can be

made in medical admission based on domicile. It is further submitted that even the Hon"ble Supreme Court in the case of P. Rajendran, referred

supra, held that territorial classification is not always bad and the decision in P. Rajendran case was subsequently distinguished in Kumari Chitra

Ghose v. Union of India 1969 2 SC 228 and N. Vasundara Vs. State of Mysore and Another, . By placing heavy reliance on said decisions, the

learned Senior Counsel would contend that the Court should not interfere with the manner of classification adopted by the State. Further, the

learned Senior Counsel placed reliance on the decision of the Hon"ble Supreme Court in State of Uttar Pradesh and Others Vs. Pradip Tandon

and Others, , wherein, the Hon"ble Supreme Court while striking down rural reservation upheld the validity of the reservation for hill area in the

State of U.P. Further, it is submitted that the literacy rate is no indication to deny regional reservation, since the area such as Mahe and Yanam are

backward areas and there are no medical colleges in the said regions, different languages are spoken and the students study under different Boards

of Education. Therefore, the learned Senior Counsel would submit that the regional reservation in respect of those three areas of Mahe, Yanam

and Karaikal cannot be faulted. It is further submitted that the condition in the Information Bulletin as regards domicile by excluding the candidates

who have not undergone their two years of course of study in Pondicherry would be bad in law.

9. The learned Counsel for the other writ petitioners while adopting the stand taken by the other learned Counsels appearing for the petitioners also

placed reliance on the decision of this Court in P. Athulya rep. by Father and Natural Guardian N. Pavithran Vs. Deputy Tahsildar (Revenue),

Centralised Admission Committee (CENTAC) and The Dean, Sri Lakshminarayana Institute of Medical Sciences, and the decision of the Hon'ble

Supreme Court in State of Maharashtra and Others Vs. Sneha Satyanarayan Agrawal and Others, .

10. We have given our careful consideration to the submissions made by the learned Counsels appearing for the parties and perused the materials

available on record.

11. Though elaborate submissions have been made on various factual issues, the crux of the controversy lies in a very narrow campus. The

Government of Puducherry published the Information Bulletin 2010-2011, prescribing the admission procedure for first year B.Tech, MBBS, BDS

and other decree courses for the academic year 2010-11. In these writ petitions, we are concerned about the admissions to the Engineering and

Medical Degree Courses. The academic qualification as per Clause 2.1 of the bulletin is that the candidates should have passed H.Sc (academic

examination) conducted by the Board of Higher Secondary Examination of Tamil Nadu or any other equivalent examination thereto with minimum

of 45%/50% respectively.

12. Clause 2.6 of the bulletin deals with domicile criteria for Union Territory of Puducherry. For better appreciation, the same is extracted herein

below:

2.6 Domicile criteria for UT of Puducherry

Candidates belonging to the UT of Puducherry are eligible for admission to all the degree courses. A candidate is considered to belong to the UT

of Puducherry, if he/she satisfies at least one of the following domicile criteria:

a) Those candidates or whose parents have been residing continuously in the UT of Puducherry for at least 5 years immediately preceding the date

of application.

b) Those who have passed SSCL/H.Sc., or any other public examination and for that purpose had undergone academic studies continuously for 5

successive classes immediately preceding the qualifying examination (including the year of the qualifying examination) in recognised educational

institution/(s) located in the UT of Puducherry and having their residence in the UT of Puducherry for 5 years continuously during that period.

c) Children of Central Government Servants/Defence Personnel/Central Paramilitary Forces/Employees of Public Sector Undertakings wholly or

substantially run either by the Central Government or by the UT of Puducherry Government, posted and serving in the UT of Puducherry for at

least a minimum period of one year prior to the stipulated last date of submission of application for the course.

d) Children of Natives of UT of Puducherry who have declared any place in the UT of Puducherry as their home town and so certified by their

respective Heads of Office.

Note: Nativity Certificate in the prescribed format has to be enclosed along with the admission application for the course.

e) Children of Defence Personnel who were killed or disabled in action and children of Central Government Servants/UT of Puducherry

Government Servants/Defence Personnel/Employees of Public Sector undertakings as referred in category (c) who have died while in service, in

the UT of Puducherry.

f) French National residing in the UT of Puducherry and covered by the terms of the ""Treaty of Cession"" shall be treated on par with the

candidates who produce the prescribed residence certificate for the UT of Puducherry. However, such French Nationals will not be required to

produce residence certificate. Instead they should produce a "certificate of registration" issued for this purpose from the French Consulate,

Puducherry.

Note: Children of these French Nationals shall not be considered for admission under the quota of non-residents.

13. Clause 5.0 of the bulletin gives the details of reservation and special allocation and the following tabulated statement would be relevant:

5.0 Details of Reservation and Special Allocation

5.1 For UT of Puducherry Candidates in Government Sponsored Colleges Reservation in admission to various degree courses offered by

Government Sponsored Colleges for Puducherry UT candidates belonging to different categories are given below:

Categories Percentage of Reservation

Scheduled Caste (SC) 16½ Applicable to Origin 16

SC Candidates only

Most Backward Classes(MBC) and Other 33(20 + 13)

Backward Classes (OBC) (a ratio of 60:40

as the quantum of reservation for MBC and

OBC respectively, out of the overall

reservation of 33%)

Children/Grand Children of Freedom Fighter 4

(FF)*

Physically Handicapped (PH)* 3

Wards of Ex-Servicemen* 1/3/10

Candidates who are excellent in Sports(SP)* 1

Special Allocation Number of Seats

Category (@) -----

B.Tech BDS BVSc & AH B.Pharm Bsc BPT BSc (MLT)

(Nursing)

Candidates from

Puducherry Region 402 22 23 38 51 9 6

Candidates from

Karaikal Region 96 5 5 9 12 3 2

Candidates from

Mahe Region 21 1 1 2 3 1 1

Candidates from

Yanam Region 16 1 1 2 2 1 1

+ For MBBS 1% and for all the other courses 3% of seats are reserved.

* Horizontal Reservation: Seats reserved/allocated under these categories will become operational, only if, the minimum member of seats

earmarked for each of these categories are not filled up, under normal process of selection in any category.

@ As per the Government Orders in force.

14. By referring to the above details of reservation and special allocation, it is contended that there is 100% reservation and the candidates from

the other region are shut out from applying for under the said quota and the same is illegal and violative of Article 15(4) of the Constitution of India.

As seen from the above chart, the respondents have applied the vertical reservation by reserving 16% for Schedule Caste, 20% for Most

Backward Classes, 13% for Other Backward Classes (20% + 13% = 33%) and adopted the horizontal reservation by fixing 4% for

Children/Grand Children of Freedom Fighter, 3% for a Physically Handicapped, 1/3 % for Wards of Ex-Servicemen and 1% for Candidates who

are excellent in Sports.

15. Apart from the above, regional allocations have been provided to the four regions namely, Puducherry region, Karaikal region, Mahe region

and Yanam region. This according to the first respondent is a horizontal reservation and is sustainable in law.

16. The first ground of attack is that regional reservation for Karaikal region, Mahe region and Yanam region is itself without any basis and in view

of the law laid down by the Hon''ble Supreme Court in the case of Minor P. Rajendran Vs. State of Madras and Others, , such classification is

violative of Article 14, 15 & 16 of the Constitution. Reliance has also been placed on the decision of the Hon''ble Supreme Court in the case of

Minor A. Peeriakaruppan, referred supra, in support of such proposition.

17. In the case of Minor P. Rajendran Vs. State of Madras and Others, the writ petitioner challenged the Rules promulgated by the State of

Madras for selection of candidates for admission to the first year Integrated M.B.B.S. Course. It appears that there was a large rush of candidates

for admission to the medical colleges in the State of Madras while the seats therein were limited. In consequence, the State of Madras which runs

these colleges framed rules for admission to them. Some of the rules were under challenge. Rule 5 which was one of the rule under challenge

provided for reservation for socially and educationally backward classes and laid down that for the purpose of the said rule ""socially and

educationally backward classes"" will mean those classes which have been specified in Group III of the revised Appendix 17-A to the Madras

Educational Rules issued with G.O.(Ms) 839, Education, dated 6th April, 1951. Rule 8 which were also under challenge provided that the seats

reserved in the general pool and the seats reserved for the socially and educationally backward classes will be allocated among the various districts

on the basis of the ratio of the population of each district to the total population of the State. However, it was mentioned that the district-wise

allocation will not apply to seats reserved for Scheduled Tribes and Scheduled castes. The constitutional validity of this district-wise reservation

was ultimately came before the Supreme Court. The Supreme Court held that Article 14 does not forbid classification, but the classification has to

be justified on the basis of the nexus between the classification and the object to be achieved. Their Lordships were of the view that the object to

be is to get the best talent for admission to professional colleges, the allocation of seats district-wise has no reasonable relation with the object to

be achieved. Consequently, Rule 8 providing district-wise allocation of seats was declared violative of Article 14 of the Constitution and the same

has been struck down. Their Lordships observed that-

13. Another justification that has been attempted is that candidates coming from various districts would settle down in those districts and thus

medical help would be available in sufficient measure in all the districts. Now, this was not stated in the affidavit on behalf of the State of Madras.

Besides there are no facts and figures to suggest that candidates from a particular district would by and large settle down in that district. Further the

various options in the matter of nativity certificate to which we have referred, show that candidates will have a number of districts to choose from

depending upon where they think that their chances are best and therefore the argument that district-wise allocation is justifiable on this ground is in

our opinion of no merit. We are satisfied therefore that the State of Madras has made out no case for district-wise allocation of seats in medical

colleges. We are also satisfied that such allocation results in discrimination and there is no nexus between this territorial distribution and the object

to be achieved, namely, admission of the best talent from the two sources already indicated. We are therefore of the opinion that allocation of seats

on district-wise basis is violative of Article 14. We may add that we do not mean to say that territorial classification is always bad under all

circumstances. But there is no doubt that district-wise classification which is being justified on a territorial basis in these cases is violative of Article

14, for no justification worth the name in support of the classification has been made out. We therefore hold that Rule 8 providing for district-wise

allocation is bad, as it violates Article 14 and we hereby strike it down.

18. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, a similar question with regard to reservation came up for

consideration before the Supreme Court. In that case, for the purpose of admission to the Maulana Azad Medical College, New Delhi certain

categories of residents only were made eligible for admission i.e., Candidates who were residents of Delhi; Sons/Daughters of Central Government

servants posted in Delhi; Candidate whose father is dead and is wholly dependent on his brother/sister who is a Central Government servant;

Sons/Daughters of residents of Union Territories; etc. The said provision for

reservation of seats was challenged as unconstitutional. The further question that came up for consideration before the Supreme Court was as to whether the differentia on which reservation has been made has rational relation with the object to be achieved. The Supreme Court holding that the ratio decided in P. Rajendiran Case (supra) is distinguishable, dismissed the appeal. Their Lordships held in paragraphs 10 and 11 of the judgment as under:

10. The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In *Minor P. Rajendran Vs. State of Madras and Others*, it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

11. The case of *Minor P. Rajendran Vs. State of Madras and Others*, is clearly distinguishable because there the classification had been made district-wise which was considered to have no reasonable relation with the object sought to be achieved. Nor can the decision of a Full Bench of the Patna High Court in *Umesh Ch. Sinha v. V.N. Singh, Principal P.M.C. and Hospital* ILR 46 Pat 616 be of any avail to the appellants. In that case preferential treatment had been given to the children of the employees of the Patna University in the matter of admission to the Patna Medical College. It was held that there was no reasonable nexus between the principle governing admission to the college on the one hand and the pecuniary difficulties or the meritorious services rendered by the employees of the University on the other and that preferential treatment to the children of these employees would amount to favouritism and patronage. There

is not question of any preferential treatment being accorded to any particular category or class of persons desirous of receiving medical education in the present case. The mere fact that the Central Government has to make the nominations with regard to the reserved seats cannot be considered to be preferential treatment of any kind. As the candidates for the reserved seats have to be drawn from different sources it would be difficult to have uniformity in the matter of selection from amongst them. The High Court was right in saying that the standards of the examinations passed by them, the subjects studied by them and the educational background of each of them would be different and divergent and therefore the Central Government was the appropriate authority which could make a proper selection out of those categories. Moreover this is being done with the tacit approval and consent of the Medical Courses Admission Committee. It appears that the Central Government has been acting in a very reasonable way inasmuch as when nominations were made only to nine seats the rest were thrown open to the general pool.

19. In another decision in the case of Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, the selection for admission to the medical colleges in the State of Tamil Nadu was on unit-wise basis. The said reservation policy was challenged before the Supreme Court. As a matter of fact in the year 1967-68 for the purpose of admission in the medical colleges in the State of Tamil Nadu the seats were distributed on district-wise basis, but that scheme was held to be invalid in P. Rajendiran Case (Supra). Thereafter, the selection was again made on a State-wise basis in the year 1969-70. But, in the subsequent year that system was given up and the selection was directed to be made on the basis of what is known as unit-wise basis. According to this scheme the medical colleges in the city of Madras were constituted as one unit and each one of the other medical colleges in the mofussil was constituted as a unit. Thus, six units were created in the State and in respect of each one of the units a separate selection committee was constituted. Allowing the writ petition filed by the petitioner the Supreme Court observed that

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11. We shall first take up the plea regarding the division of medical seats on unit-wise basis. It is admitted that the minimum marks required for

being selected in some unit is less than in the other units. Hence prima facie the scheme in question results in discrimination against some of the

applicants. In Rajendiran case this Court ruled that the district-wise distribution of available seats is violative of Article 15 of the Constitution. But it

was contended on behalf of the State that the unit-wise distribution of seats was adopted for administrative convenience. It was said that it was not

possible for one selection committee to interview all the applicants. Therefore several committees had to be constituted. In the past when

applicants were interviewed by several committees there were complaints that the standard adopted by one committee differed from that adopted

by others and therefore the applicants' ability was not tested by a uniform standard. Further it was said that when selections were made by several

committees there was delay in preparing a consolidated list. We are unable to accept these grounds as being real grounds for classification. The

grievance when selections were made by several committees in a State-wise selection the standard adopted by various committees differed, would

continue even when selections are made by several committees in a unit-wise selection. Whether the selection is made by selection committees on

State-wise basis or unit-wise basis, the standard adopted by various committees is bound to vary. Hence in principle it makes no difference.

20. In the case of N. Vasundara Vs. State of Mysore and Another, the petitioner challenged the constitutional validity of Rule 3 of the Rules for

selection of candidates for admission to the pre-professional M.B.B.S. Course in the Government Medical Colleges in the State of Mysore. Rule 3

of the said Rules provided that no person who is not a citizen of India and who is not domiciled and resident in the State of Mysore for not less

than ten years at any time prior to the date of the application for a seat shall be eligible to apply. The said rule was challenged on the ground of

violation of right to equality guaranteed by Article 14 of the Constitution. According to the petitioner the said rule imposing condition of residence

for a minimum period of 10 years in the State of Mysore in addition to the condition of being domiciled in that State created an artificial

classification which suffers from unconstitutional discrimination. The Supreme Court upholding the said rule distinguished P. Rajendiran Case

(supra) and observed as under:

6. The argument that candidates coming from various districts would settle down in those districts to serve the people there was not accepted, because there was no material on the record giving facts and figures suggesting that candidates from a particular district would generally settle down in that district. It was not even so stated in the affidavit filed on behalf of the State of Mysore in that case. The Court, however, took care to clarify the legal position by adding:

We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that districtwise classification which is being justified on a territorial basis in these cases is violative of Article 14 for no justification worth the name in support of the classification has been made out.

In Chitra Ghosh case this Court said:

The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In *Minor P. Rajendiran v. State of Madras* (1968) 2 SCR 786 - it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

The decision in *Minor P. Rajendiran* case was distinguished on the ground that in that case the classification made districtwise had been considered to possess no reasonable relation with the object sought to be achieved. It was also observed in *Chitra Ghosh* case:

It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is

a question of policy and depends inter alia on an overall

assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide

facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the

courts to interfere with the manner and method of making the classification.

According to this observation which merely reaffirms the settled law, if the sources are properly classified on reasonable basis, then courts are not

expected to interfere with the manner and method of making the classification. Reasonable basis of course must mean that the basis is not arbitrary

or fanciful, but bears a just, rational and intelligible relation with the object sought to be achieved by the classification.

21. In the case of *State of Uttar Pradesh v. Pradip Tandon* reported in AIR 1975 SC 5673 the Government of U.P. in the matter of admission in

medical colleges in U.P. under the Meerut University issued instructions making reservation in favour of candidates from rural areas , hill areas and

Uttarkhand area. The constitutional validity of the said reservation was challenged on the ground that the same is unconstitutional and violative of

Article 14 of the Constitution. The contention of the State on the other hand was that the reservation for rural, hilly and Uttarkhand areas for

socially and educationally backward classes, and therefore, these reservations are valid on geographical and territorial basis. The Supreme Court

while declaring the reservation of seats for candidates coming from rural areas as unconstitutional upheld the reservation for candidates from hilly

and Uttarkhand areas. Their Lordships observed in paragraphs 19 and 20 as follows:

19. The hill and Uttrakhand areas in Uttar Pradesh are instances of socially and educationally backward classes of citizens for these reasons,

Backwardness is judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards

of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of

resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the element of

social backwardness is observed. When effective territorial specialisation is not

possible in the absence of means of communication and technical processes as in the hill and Uttarakhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people.

20. Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttarakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education.

22. Thus in view of the law laid down in the above decisions, it is clear that territorial classification is not bad under all circumstances, but there should be a reasonable basis for such classification and the basis should not be arbitrary or fanciful, but should bear a just, rational and intelligible relation with the object sought to be achieved by the classification.

23. The reasons assigned by the respondent Government for adopting such classification is by stating that Puducherry Union Territory consist of

four former French establishments namely, Puducherry, Karaikal, Mahe and Yanam surrounded by the territories of Tamil Nadu, Kerala and

Andhra Pradesh, except for Puducherry region, the other three regions are Backward and the students in the outline regions could not compete

with the students of Puducherry and the area is geographically divided and the standard of Education differs in the area and the students cannot

compete and therefore, the Government after considering the geographically background and the various aspects of the matter has made special

allocation for such areas. In fact when this allocation was made for the first time by G.O.Ms. No. 44, dated 05.04.2001, the First Bench of this

Court in batch of writ petitions in W.P. No. 24699 of 2003 etc batch dated 24.09.2003, upheld the said reservation. Further, it is stated that the

economical backwardness of the areas was also one of the criteria for creating such reservation.

24. In the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and

Others, the Supreme Court was considering the question as to whether consistently with the constitutional values, admissions to a medical college or any other institution of 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 or can any reservation in admission be made for them so as to give them precedence over those who do not possess "domicile" or residential qualification within the State, irrespective of merit. The Supreme Court held that the wholesale reservation made by some of the State Governments on the basis of "domicile" or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit, is unconstitutional and void being in violation of Article 14 of the Constitution. However, the scheme of admission to medical college may depart from the principle of selection based on merit where it is necessary to do so. Their Lordships in paragraph 12½ 13 of the judgment observed:

13. We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality. Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality Clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where,

therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet William Blake said graphically is very true, namely, "One law for the Lion and the Ox is oppression". Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or, inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. We may in this connection usefully quote what Mathew, J., said in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, ...it is obvious that "equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations 9.

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality; de jure equality must ultimately find its *raison d'être* in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer, J., in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, "weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity...equality is not negated or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the

general good and individual merit". The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on

merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals.

Their lordships further held in paragraph 21 as follows:

21. But, then to what extent can reservation based on residence requirement within the State or on institutional preference for students passing the

qualifying examination held by the university or the State be regarded as constitutionally permissible? It is not possible to provide a categorical

answer to this question for, as pointed out by the policy statement of the Government of India, the extent of such reservation "would depend on

several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development

of the area and other relevant factors". It may be that in a State where the level of educational development is woefully low, there are

comparatively inadequate opportunities for training in the medical speciality and there is large scale social and economic backwardness, there may

be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage may not militate

against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context

of educational opportunities would enter into the determination of the question as to what in the case of any particular State, should be the limit of

reservation based on residence requirement within the State or on institutional preference. But, in our opinion, such reservation should in no event

exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The

Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but we are of the view that it would be fair

and just to fix the outer limit at 70 per cent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting

claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attenuation which may

be made by the Indian Medical Council which is the statutory body of medical practitioners whose functional obligations include setting standards

for medical education and providing for its regulation and coordination. We are of the opinion that this outer limit fixed by us must gradually over the years be progressively reduced but that is a task which would have to be performed by the Indian Medical Council. We would direct the Indian Medical Council to consider within a period of nine months from today whether the outer limit of 70 per cent fixed by us needs to be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the States and the Union Territories. We would also direct the Indian Medical Council to subject the outer limit so fixed to reconsideration at the end of every three years but in no event should the outer limit exceed 70 per cent fixed by us. The result is that in any event at least 30 per cent of the open seats shall be available for admission of students on all-India basis irrespective of the State or university from which they come and such admissions shall be granted purely on merit on the basis of either all-India entrance examination or entrance examination to be held by the State. Of course, we need not add that even where reservation on the basis of residence requirement or institutional preference is made in accordance with the directions given in this judgment, admissions from the source or sources indicated by such reservation shall be based only on merit, because the object must be to select the best and most meritorious students from within such source or sources.

25. In the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , the Constitution Bench of the Supreme Court while considering a similar question observed:

39. The ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready therefor. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said articles for all intent and purport are species of Article 14 which is the genus in a sense that they provide for exception to the equality Clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in our constitutional scheme. Whereas larger interest of the country must be perceived, the lawmakers cannot shut their eyes to the local

needs also. Such local needs must receive due consideration

keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India.

49. A scheme, thus, came to be framed by this Court which is a law within the meaning of Article 141 of the Constitution of India and is binding on

all the States in terms of Article 144 of the Constitution of India. The principal considerations which weighed with the Court for arriving at the

aforementioned conclusion were: (SCC pp. 686-87, para 19)

There can be no doubt that the policy of ensuring admissions to the MBBS course on all-India basis is a highly desirable policy, based as it is on

the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal

to be aimed at and it may not be realistically possible, in the present circumstances, to adopt it, for it cannot produce real equality of opportunity

unless there is complete absence of disparities and inequalities - a situation which simply does not exist in the country today. There are massive

social and economic disparities and inequalities not only between State and State but also between region and region within a State and even

between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and

injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do

not have the social and material resources to take advantage of these opportunities which remain merely on paper recognized by law but non-

existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because,

though possessing an intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with

others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged position, been

able to secure education in good schools would be at a disadvantage compared to students belonging to the affluent or well-to-do families who

have had the best of school education and in open all-India competition, they would be likely to be worsted.

26. Thus, the Hon''ble Supreme Court took note of the social and educational

backwardness of the area and took note of lack of educational institutions and educational aids for the people in the hill and Uttrakhand area and upheld the reservation.

27. It is brought to our notice that there are no medical colleges in Mahe and Yanam region and in the counter affidavit filed by the official

respondents, they have justified the reason behind such reservation. We are convinced that the reason assigned for such regional reservation for the

three regions of Mahe, Yanam and Karaikal has a rational behind it and its satisfies, the object sought to be achieved by the classification, that is to

uplift the area from its backwardness. Accordingly, we have no hesitation to hold that the region wise reservation for Mahe, Yanam and Karaikal

regions is with a reasonable basis and there is no arbitrariness in such classification and accordingly such classification is held to be valid.

28. The next question to be considered is as to whether the respondents 1 and 2 are justified in reserving the remaining 75% of the seats for

Puducherry Region alone. It is relevant to mention at this juncture that the learned Additional Solicitor General appearing for the Government of

Puducherry had submitted that he has advised the Government of Puducherry that such reservation for the Puducherry Region cannot be sustained

and that steps would be taken to delete such reservation from the next academic session i.e. 2011-12. It is submitted by the learned

Additional Solicitor General that and the reservation for the current session 2010-11 may be allowed to continue, since the counselling for the

medical seats has already been completed and the counselling for the Engineering Seats are in progress.

29. While we appreciate the fair stand taken by the learned Additional Solicitor General in advising the first respondent Government to remove

such regional reservation in respect of Puducherry area, from the next academic session, we are not inclined to accept the submissions to allow

such reservation to continue for the current academic session solely on the ground that the counselling has already commenced.

30. The Hon'ble Supreme Court in the case of Rajendran referred supra, while dealing with the validity of a Rule notified by the State of Madras

which inter alia provided seats for M.B.B.S. Course be reserved in the general pool and seats for socially and educationally backward classes to

be allocated among the various districts on the basis of the ratio of the population of each districts to the total population of the state held that

Article 14 of the Constitution does not forbid classification, but the classification has to be justified on the basis of the nexus between the

classification and the object to be achieved. The Hon''ble Supreme Court further held that therefore, when the object sought to be achieved is to

get the best talent for admission to professional Colleges, the allocation of seats districtwise has no reasonable relation with the object to be

achieved and such districtwise allocation would result in the object being destroyed and struck down the Rule as being violative of Article 14 of the

Constitution of India. In our view, the decision rendered in Rajendran''s case would squarely be applicable to the facts and circumstances of the

present case in so far as the region wise reservation for Puducherry region alone.

31. In the counter affidavit, no reason has been assigned as to the object behind reserving 75% seats exclusively to the Puducherry Region. In fact

the counter affidavit only seeks to justify the regional reservation for Karaikkal, Mahe and Yanam Regions and has absolutely not adverted to the

object behind reservation for Puducherry Region, which has been introduced for the first time this year (2010-2011). All that is stated is that by

allocation of 75% seats exclusively for Puducherry Region would in no way affect the interest of candidates hailing from Karaikkal, Mahe and

Yanam Regions. This could hardly be a justification to support the decision taken. The Government while constituting a Consultative Committee to

review the Regional reservation of seat by G.O.Ms. No. 58 dated 28.4.2010, was considering the regional reservation for Karaikal, Mahe and

Yanam regions alone and the reservation for Puducherry region was never thought of or contemplated. Thus, in our view, the reservation for the

Puducherry Region has not been justified by the Government in any manner.

32. At this stage, it would be useful to refer to the decision of the Hon''ble Supreme Court in the case of State of U.P. v. Pradip Tandoon referred

supra. In the said decision, the Hon''ble Supreme Court struck down the reservation of seats in Medical Colleges for candidates from rural areas

as unconstitutional. While striking down such reservation for rural areas, the Hon''ble Supreme Court observed that the reservation for rural areas

cannot be upheld because there is no classification based on the residence

between students coming from within the State and outside the state and the object of providing medical education to students in U.P. is to secure the best possible students for admission to the colleges. The submissions made by the learned Attorney General that rural population would be a source for drawing students was also rejected.

33. The Full Bench of this Court in *Minor S. Muthusenthil v. State of Tamil Nadu* reported in 2002 (1) CTC 385, struck down the claim of the scheme of the Government of Tamil Nadu reserving seats to rural students on the ground that rural reservation has no constitutional sanction and the Full Bench followed the decisions of *Rajendran's case*, *Peria Karuppan's case* and *Pradip Tandoon's case*, and other decisions while striking down the reservation.

34. Thus, in the absence of any material placed before this Court, to justify the reservation of 75% of the seats for the Puducherry Region, we are inclined to hold that such reservation is bad in law. Accordingly, the reservation in respect of 75% of seats for the Pondicherry Region requires to be set aside.

35. The learned Counsel for the petitioners would further contend that in Annexure 3 of the Information Bulletin, the respondents have called upon the students to produce a certificate to claim the seats under the regional allocation. This certificate is in addition to the certificates which are found in Annexure-3. According to the petitioners, insisting upon such certificates itself is illegal as it works against the theory of "domicile". Merely because a student has pursued his higher education in any one of the Regions in the Union Territory of Puducherry, he cannot be regarded as a person who is not a "domicile" of Union Territory of Puducherry as long as he possesses any one of such certificates mentioned in Sl. Nos. 1 to 5 in Annexure 3 of the Information Bulletin. We have in the earlier part of this Judgment upheld the regional reservation in respect of Mahe, Yanam and Karaikal regions and set aside the regional reservation in respect of Puducherry region. Therefore, the grievance of the petitioners are met in so far as the students aspiring for the seats hitherto reserved exclusively for Puducherry region as based on this Judgment, it has to throw into the common pool. However, in respect of the other three regions where we have upheld the regional reservation in view of the law laid down by the

Hon"ble Supreme Court in the case of Dr. Pradeep Jain and Saurabh Chaudri, referred supra, we are of the view that no error could be attributed

in insisting on a certificate as per Clause 6 of Annexure III of the Information Bulletin. It is seen that the object behind such regional reservation in

the three areas of Mahe, Yanam and Karaikal is for uplifting the area from its backwardness and that the students in the three areas pursue their

education under different State Education Boards and such other matters. If such certificate as required under Clause 6 is not insisted upon for

claiming regional reservation, then the very object behind the classification is lost and the object would stand defeated. Therefore, we are unable to

subscribe to the stand taken by the learned Counsels for the petitioners in this regard.

36. In the result, all the Writ Petitions are partly allowed and the impugned Government Order in G.O.Ms. No. 99 dated 10.8.2006 and the

Information Bulletin issued by the second respondent as approved in G.O.Ms. No. 65 dated 21.5.2010 in so far as it relates to specific regional

allocation of seats for Puducherry Region alone is set aside as being violative of Article 14 and 15 of the Constitution of India and in all other

respects, the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. No costs.