

(1996) 10 BOM CK 0032

In the Bombay High Court

Case No : Writ Petns. No's. 4252, 4253, 1531 and 1533 of 1996

Govinddas Mannulal Shroff and etc.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 371(2)
Maharashtra Universities Act, 1994 — Section 65

Citation : AIR 1997 Bom 114

Hon'ble Judges : M.B. Shah, C.J; P.S. Patankar, J; J.N. Patel, J

Bench : Full Bench

Advocate : Pradeep Deshmukh and A.S. Golegaonkar, Zubin Kamdin, instructed by Daphtary Ferreira dn Divan and Ms. A. Wandrewala, instructed by Apex Juris, for the Appellant; B.P. Apte, Addl. Advocate-General and Mrs. S.S. Gokhale, A.G.P. and A.M. Kanade, Vijay Sharma and P.K. Joshi and P.M. Palshikar, for the Respondent

Judgement

M. B. Shah, C. J.

1. We have already passed operative order dated 29th August 1966 striking down Rule 4.1.2.1 of the Rules called "Rules for Selection to M.B.B.S./B.D.S./B.A.M.S./B.H.S.S. Course 1966-67" (hereinafter referred to as "The Rules") giving short reasons for the same. The said order of under:--

"P. C.

These four petitioners are heard and disputed together as they involve a common question with regard to the validity of Rule 4.1.2.1 of Rules for Selection of M.B.B.S./B.D.S./B.A.M.S./B.H.M.S. Courses 1966-67 framed by the State Government. After hearing the learned Counsel for the parties at length, we pass the following short order:--

2. As the matter involves admission of Medical Colleges on the basis of Rules called "Rules for Selection of M.B.B.S./B.D.S./B.A.M.S./B.H.M.S. Course

1966-97" (hereinafter called "the Rules") framed by the State Government which are under challenge and as stay order is granted by the Division Bench of the Aurangabad Bench of the Writ Petition No. 3260 of 1996 consequent upon which the admission process is held up we pass the following order, for with the elaborate reasons would be given subsequently. Writ Petition No. 1531 of 1996 which is filed a Bombay Bench is called for a declaration that Rule 4.1.2.1 is invalid.

3.The relevant Rules read as under:

"DISTRIBUTION OF SEATS

4.0.1. The seats available for admission will be distributed as specified below.

4.1.0. ALL INDIA ENTRANCE EXAMINATION SEATS.

Fifteen per cent of available seats at all Government Medical and Government Dental Colleges, recognised by the Medical Council of India and Dental Council of India respectively, are reserved for candidates of All India Entrance Examination, nominated by the Director General, Health Services, Government of India, New Delhi. Remaining 85% seats will form the denominator for calculation of number of seats under various subcategories at the colleges.

4.1.1. SEATS AT THE DISPOSAL OF THE COMPETENT AUTHORITY.

Out of the remaining seats, all seats at Government of and all seats at Private Aided Colleges and fifty per cent of seats in Private Unaided Colleges will be treated as "Merits seat". Balance fifty per cent seats of Private Colleges will be treated as "Payment seats". Not more than 15 per cent of the total seats of the Private Medical and Dental Colleges and not more than 10 per cent of total seats of Private of unaided Ayurved and Homoeopathic Colleges within the category of payment seats are permitted to be filled in on the basis of the merit by Private Colleges by sons and daughters of NRIs/Foreign Nationals. Excepting these seats as well as the seats for nominees of Government of India, all remaining seats are at the disposal of the Competent Authority.

4.1.2. FURTHER BREAK- UP.

4.1.2.1. The seats of 70 per cent open category and the seats reserved for backward classes available in the State will be pooled together and will be equitably distributed amongst all the University regions in the State in the proportion of population. In the process of the distribution of seats of the percentage of constitutional reservation will be maintained as scrupulously as possible.

4.1.2.2. Out of the seats at the disposal of the Competent Authority, reservations as specified subsequently will be worked out as stated at Rule 4.1.2.3.2. However, these will be allotted within the University area component.

4.1.2.3. After the exclusion of the seats of reservations stated in Rule 4.1.2.2.

above, the remaining seats will be available for Open Merit category, out of such seats;

4.1.2.3.1. Thirty per cent seats will be filled in from amongst applicants from the State merit list, by the Competent Authority.

4.1.2.3.2. The remaining 70% seats will be filled in by the Designated Authorities from amongst the applicants who have passed the 12th Std. (or equivalent) examination from the Schools/Colleges situated in the concerned University area as per rule."

4. The challenge is to Rule 4.1.2.1. i.e. distribution of all medical seats in the State in the proportion of University wise population. In all these petitions filed before this Court as well as before the Aurangabad Bench of this Court, the validity of the said Rule is challenged.

5. Admittedly in the present case, the powers conferred under Article 371(2)(c) of the Constitution i.e. an equitable arrangement providing adequate facilities for medical education, is not exercised.

6. In the present case, prospectus was issued on 6th June, 1996; forms for admissions were to be filled in between 1st July, 1996 and 15th July, 1996; in the application forms the students are required to give their choice/preference of colleges; at that stage there was no chart indicating distribution of medical seats on the basis of University wise population. The chart is produced for the first time before this Court on 27th August, 1996. However, it is stated by the learned Additional Advocate-General that the chart was prepared on 31st July, 1996 distributing additional seats from Universities found in surplus on the basis of University region wise population. A further chart was produced showing re-distribution of seats college wise. In the re-distribution of seats, admittedly seats of medical colleges run by the Bombay Municipal Corporation are not included though the said seats were calculated for arriving at the seats available at the Bombay University.

7. Further, the learned Counsel for the petitioners who have filed petitions at the Aurangabad Bench substituted that in view of the statement produced by the learned Additional Advocate-General at the time of the hearing of these petitions for distribution of the seats on the basis of population, they are not interested in challenging the said Rule.

8. As against this, the learned Counsel for the petitioners who have filed petitions at Bombay Bench submitted that the said Rule is, on the face of it, illegal, arbitrary, vague and is in violation of the decisions rendered by the Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, and Nidamarti Maheshkumar Vs. State of Maharashtra and Others, .

9. In our view, the contention of the learned Counsel for the petitioners that Rule 4.1.2.1. of the Rules for Selection to M.B.B.S./B.D.S./B.A.M.S./B.H.M.S. Courses, 1996-97 is vague is required to be accepted. There is no clear guidelines to the

competent authority for distributing medical seats on the basis of University regions in the State in the proportion of population. Nothing is mentioned as to whether the population of University area is to be taken into consideration or whether the population of the three different regions of the State i.e. Marathwada, Vidarbha and Western Maharashtra is to be taken into consideration. Further, nothing is mentioned as to whether the population of which year is to be taken into consideration. The Competent Authority has been left with unguided discretion which renders the said Rules as unfair for its operation.

10. By the impugned Rule, in addition to 70% reservation of seats on University wise basis, the seats of medical colleges of the entire State is divided and allocated on the basis of population of particular University. The alleged object is to allot more seats to students from the so-called backward regions. This is done without verification of so-called backwardness of any particular area. In the case of Nidamarti Maheshkumar Vs. State of Maharashtra and Others, , the Supreme Court dealt with a similar Rule which provided for reservation of seats at Government Medical Colleges in Maharashtra State on the basis of respective University area. Before the Supreme Court regionwise classification for admission to medical colleges was sought to be defendant by the State Government on the ground that Vidarbha and Marathwada regions are backward as compared to Pune and Bombay regions which are far more advanced. It was contended on behalf of the State Government that, in the circumstances, the provision that a student from a school or college situate within the jurisdiction of a particular University would not be eligible for admission to medical college or colleges situate in the jurisdiction of another University but would be confined only to the medical college or colleges within the jurisdiction of the same University, was intended to give protection to students in Vidarbha, Marathwada and other predominantly rural areas, the population of which is socially, economically and educationally backward, for otherwise they would have no opportunity for medical education since they would not be able to compete with students from Pune and Bombay regions and consequently the classification made by the said provision was constitutionally permissible.

11. The above contention was rejected by the Supreme Court. The Court observed that a student from one region would have no opportunity for securing admission in the medical college or colleges in another region though he may have done much better in the other region. The Court further held that region wise scheme adopted by the State Government clearly resulted in denial of equal opportunity and is violative of Article 14 of the Constitution. The Court reiterated the ratio laid down in its earlier decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, that reservation based on residence requirement or institutional preference should not exceed the outer limit of 70 per cent of the total number of open seats.

12. In the present case, 70% of seats are reserved on University wise basis and

thereafter further reservation for the students of certain Universities on the basis of University region population would certainly be more than 70 per cent because in their region the reservation would be 70 per cent plus certain more seats which would be reserved for them in other Universities. Further, the scheme adopted by the State Government of distributing seats on the basis of University wise population, on the face of it, appears to be irrational which results in denial of equal opportunity to the meritorious students who have cleared common qualifying H.S.C. examination held by State Education Board and is violative of Article 14 of the Constitution. A candidate who has obtained more marks but has passed H.S.C Examination, say from Pune University area, would not get admission in those seats which are reserved for students who have passed H.S.C Examination from Marthwada region. It is also to be noted that even though a candidate may or may not be resident of Marathwada region but if he passes examination from that region, reservation of seats in other regions is provided. This has no nexus with the object sought to be achieved. There is apparent inconsistency in operation of Rule 4.1.2.1. and Rule 4.1.2.3 which we would discuss elaborately/subsequently and it suffers from non-application of mind.

13. Further, for obviating difficulties of students from backward regions, in paragraph 7 of its judgment in Nidamarti Maheshkumar Vs. State of Maharashtra and Others, , the Supreme Court has suggested that the State Government can provide for reservation in respect of certain percentage of seats in medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the Government is on the higher side it would not fall foul of the constitutional mandate of equality. Instead of exercising that power, the State Government has, in the present case, created a mess in hot haste.

14. If the State Government arrives at the conclusion that Bombay, Pune and Nagpur regions are developed and are not backward, then, as suggested by the Supreme Court, it could have provided University wise or regional reservation in a different manner by reducing the 70% University wise reservation to, say, 50% in those developed areas and for the rest of the backward areas it could have provided 70% reservation. This would meet the demand of providing additional avenue to compete with the other students on merit.

15. We make it clear that it is agreed that except Rule 4.1.2.1., rest of the Rules are materially similar to the Rules of admission for the year 1995-96.

16. In the result, the impugned R.4.1.2.1 is held to be violative of Article 14 of the Constitution and is hereby struck down. The State Government is directed to grant admissions to Medical Colleges at the earliest by following the rest of the said Rules so that one academic term of the students can be saved.

17. The learned Additional Advocate General stated that in view of the introduction of Rule 4.1.2.1. Rule 4.1.3.4.0, which was existing in the 1995-96 Rules, was adopted. As we are striking down the said Rule 4.1.2.1, Rule

4.1.3.4.0 would revive for the academic year 1996-97. The Competent Authority would give seven days" time for the students from the North Maharashtra University area to make applications.

18. Rule in each of the petitions is made absolute to the aforesaid extend, with no order as to costs.

We have indicated in the said order that elaborate reasons would be given subsequently. We now proceed to give the reasons.

Some factual background

2. a) Writ Petition No. 4252 of 1996.

This petition has been filed as a Public Interest Litigation, inter alia, praying that Rule 4.1.2.1 of the Rules framed by the Government of Maharashtra be declared as invalid and unconstitutional and Government be directed to distribute all the seats in Medical Colleges on population basis including seats in Medical Colleges run by the Bombay Municipal Corporation (BMC). It is stated that Article 371(2) (c) of the Constitution of India contemplates making equitable arrangements providing adequate facilities for technical education in respect of all the three regions in the State. The regional backwardness is a constitutionally accepted phenomena and, therefore, the claim of special treatment to the people from backward region like Marathwada based on population is within the four corners of the provisions of the Constitution and the distribution of seats taking Marathwada region or area as a component is necessary. It is stated that when the population is accepted as a basis for distribution of seats in the Rules, there is no reason to exclude seats of any institution or college in the State from the purview of the common pool. It is necessary that total number of seats i.e. total intake of the State as a whole should be decided and it should be distributed to each region i.e. Marathwada, Vidarbha and rest of the Maharashtra (including Mumbai) on population basis. It is alleged that it is necessary in view of Article 371(2)(c) of the Constitution which envisages principle of equitable arrangement of facilities for technical education. If this is not done, then it is violative of the spirit of Articles 14 and 371(2)(c) of the Constitution of India. Therefore, it is necessary to give a direction to the State Government to distribute the seats in medical colleges including post-graduate courses on that basis.

b) Writ Petition No. 4253 of 1996

This petition has been filed on behalf of a student seeking admission to M.B.B.S. Course. The student belongs to Scheduled Tribe reserved category. It is alleged that Rule 4.1.2.1 provides 70% reservation for open as well as reserved categories available in the State which will be pooled together and equitably distributed amongst all the University regions in the State in the proportion of population whereas Rule 4.1.2.2 provides University area as a component in the matter of 70% regional reservation. It is contended that both these rules are contradictory and Rule 4.1.2.1 overrides Rule 4.1.2.2. and hence the said Rule

4.1.2.2. be declared as invalid.

(c) Writ Petition No.1531 of 1996 AND Writ Petition No. 1533 of 1996

These petitions have been filed by the students who are seeking admission in medical colleges within the region of Bombay University. They have been filed for declaration the Rule 4.1.2.1 is invalid and further praying that the Rule of 1996-97 do not apply to medical colleges run by the BMC colleges are not included in the colleges mentioned in the 1996-97 Rules (Annexure "A") and the basis of population envisaged in the said rules is unconstitutional and contrary to the decisions of the Supreme Court. It is pointed out that distribution of the seats on the basis of population is admittedly not framed under the provisions of Article 371(2)(c) of the Constitution. Admittedly, the Governor has not passed any order under the said provision and hence there is no question of admission Rules having been made in pursuance of the said Article . It is further submitted that the said Article does not contemplate distribution of seats on the basis of population or dividing the facilities between the three regions on the basis of population. The Article envisages providing of facilities and that must mean that new facilities are to be created in the region by making necessary budgetary provision. It is further submitted that the said Rule is absolutely vague, impracticable and suffers from excessive delegation of the legislative function. It is unreasonable in nature and is having potentially of bringing in flood of litigation every year in respect of admissions to medical colleges. It is also inconsistent with other provisions.

Admittedly Rules are not framed on the basis of Article 371(2)(c) of the Constitution.

3. We may first point out that the learned Additional Advocate-General frankly and fairly conceded that at this stage he cannot rely upon Article 371(2)(c) of the Constitution as no order is passed by the Hon''ble Governor. However, he relied upon Article 162 of the Constitution to support the validity of the 1996-97 Rules. Since some of the learned Counsel tried to reply upon the said Article we are dealing with it at the outset.

4. The Hon''ble President of India passed the order dated 9th March, 1994 conferring upon the Hon''ble Governor of Maharashtra special responsibility for establishment of separate Development Boards of Vidarbha, Marathwada and rest of Maharashtra and for matters specified in Article 371(2)(b) and (c) in respect of those areas. Pursuant thereof, the Hon''ble Governor had issued the order dated 3rd April 1994 establishing the three Boards and under Clause 10 the powers vests with him to give necessary directions for making arrangement for education, training and employment. The Hon''ble Governor has also issued order for framing Rule son 5th August, 1994 called "Development Boards of Vidarbaha, Marathwada and the rest of Maharashtra Rules, 1994". Rule 8(1) and (2) thereof are as follows:--

"8. Equitable arrangement for Education, Training and Employment:--

(1) The Technical Education Department shall conduct a bench mark survey and prepare the statistical information on available opportunities in Technical education and vocational Training in the areas under each Board. The Governor may then take a view on the levels of development in this sector and also determine the backlog, if any, with reference to average indicators of such opportunities in the State as a whole.

(2) While considering these opportunities of Technical Education, all the Government Institutions and Government Aided Institution in the areas shall be taken into consideration....."

5. The Hon''ble Governor has appointed a Committee of members from the three Development Boards and called for a report to enable him to pass necessary orders. But so far the Committee has not given its Final Report. So no order is passed. But one thing is clear in rules 8(2) that only Government Institutions and Government Aided Institutions are to be taken into consideration and not the institutions (Medical Colleges in this case of BMC) which do not receive any Government aid. Article 371(2)(c) speaks about "facility". The question will have to be decided whether it will include pooling together all the medical seats in the entire State or increasing the medical colleges or seats and other infrastructure for technical education for development of the backward area. Prima facie, it would mean creating or increasing facilities in the backward area. Therefore, we are not touching that aspect. This would also bring to an end the main argument advanced on behalf of the Petitioners in Writ Petition in Writ Petition Nos. 4252 of 1996 and 5253 of 1996.

Whether Rule 4.1.2.1 is valid.

6. The State Government has passed Resolution dated 6th June, 1996 and framed the Rules of 1996-97. We may state that these Rules are similar to the rule framed in 1995-96 practically in all respects, except one or two. In 1995-96, Rule 4.1.2 deal with "further break-up" and Rule 4.1.3.1 was as follows:--

4.1.3.1 The question of equitable distribution of seats amongst various University Areas has been remitted by Hon''ble Supreme Court to Hon''ble High Court and, therefore, these Rules will be subject to the final order of Hon''ble High Court."

In the 1996-97 Rules, Rule 4.1.2 deals with "further break-up and Rule 4.1.2.1 replaces Rule 4.1.3.1 Rule 4.1.2.1 reads as follows:--

4.1.2.1. The seats of 70 per cent open category and the seats reserved for backward classes available in the State will be pooled together and will be equitably distributed amongst all the University regions in the State in the proportion of population. In the process of distribution of seats the percentage of constitutional reservation will be maintained as scrupulously as possible."

7. We may point out that 1996-97 Rules do not include the seats from the medical colleges run by BMC. But the learned Additional Advocate -General submitted that for the purpose of Rule 4.1.2.1 those seats shall not be

distributed but shall be taken into consideration for the purpose of finding out the number of seats that can be allotted to each university region on the basis of population. At the time of hearing, he submitted a chart in that respect which does not form part of the Rules. The effect thereof is going to be the same. i.e. to take away the seats from other medical colleges in the region of Bombay University and other universities and to allot the same to some other university region.

8. Admittedly, the object of framing the Rules for admission to medical colleges is to give admission to medical colleges is to give admission to the most deserving and meritorious students who secure more marks in H.S.C examinations. In the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , the Supreme Court has observed that efforts must always be to select the best and the most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country. It was further held that the scheme of admission to medical colleges may depart from the principle of selection based on merit in two cases, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals. The two cases mentioned are what may be called State interest and the other is what may be described as a regional scheme for backwardness.

9. We have already pointed out that Hon''ble Governor has appointed a Committee of members from the three Development Boards and called for a Report to enable him to pass necessary orders. But so far the Committee has not submitted its final report and no order is passed. Therefore, at this stage there is no Report and there is no data and it cannot be said generally that all areas covered by one university are forward and by another university backward. It is well known, and judicial notice can be taken, that there is great disparity in economical development in areas that may be covered by one university. Secondly, the Boards are constituted region-wise (three regions) and not university-wise. Therefore, in the absence of good data being available, it can very well be said that Rule 4.1.2.1 based on division of seats population-wise gives a go-by to the selection of the students on the basis for merit. It cannot be justified in the interest of State or on the ground of claim of backwardness of a particular region.

10. By the impugned Rule, seats in the medical colleges in the entire State are sought to be distributed on the basis of University-wise population. This criteria of distribution of seats on the University-wise population nowhere colleges are given to the areas which are backward in medical facilities. It has no connection with the object of reserving more seats to the so-called backward areas. As such, it is distribution of medical seats on the basis of population alone. Since seats in medical colleges have been distributed on university-wise population, the population basis has nothing to do with backwardness of a particular region. It cannot be said that by distribution of seats on population basis, the object of

giving more educational facilities in educationally backward area is achieved. It only amounts to simpliciter division of medical seats on pro rata basis of population.

11. Secondly, by this method, students who have passed common H.S.C. Examination would be differentiated wholly on the criteria of passing the H.S.C. Examination through a particular center or university. This method of reservation of seats in other universities would wholly exclude meritorious students of those universities from competing. Not only this but by chance if a student passes examination from a particular university even though he may be a resident of Mumbai or Pune Cities, he would have an additional advantage of getting admission on reserved seats. As such, no criteria of domicile is laid down for giving more chance to the students coming from the so-called backward areas.

12. Thirdly, maximum reservation of 70% of seats for students who have passed examination from that university is already made. By the impugned Rule, what is sought to be done is that apart from the 70% reservation, additional seats are reserved in some university for the students of other universities by dividing the seats on the basis of university-wise population. This division of seats on the basis of university-wise population gives a total go-by to the merits in a State where common H.S.C. Examination is held. For this, there is no data to indicate that distribution of seats on university-wise population is based upon any study or report by any Committee that region and to ameliorate the said condition something was done by the State.

13. The Rules were pronounced in the beginning of the term in haste without considering all these aspects. At this stage, before discussing other aspects, we would only quote some paragraphs from the decision of the Supreme Court in *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, :--

"... We cannot uphold the Delhi University's "reservation" strategy merely because Government was faced with student "fasts" and ministers desired a compromise formula and the University bodies simply said "Amen". The constitutionality of institutional reservation must be founded on facts of educational life and the social dynamics of equal opportunity. Political panic does not ipso facto, make constitutional logic.

18. Prima facie, equal marks must have equal chance for medical admissions, as urged by the petitioner. And neither university-based favoured treatment nor satyagraha induced quota policy can survive the egalitarian attack. To repulse the charge, equality-oriented grounds must be made out. Constitutional equality itself is dynamic, flexible, and molded by the variables of life. For instance, if a region is educationally backward or woefully deficient in medical services, there occurs serious educational and health-service disparity for that human region which must be redressed by an equality-and-service minded welfare State. The purpose of such a policy is to remove the existing inequality and to promote welfare-based quality for the denizens of the backward regions. The specific

strategy to ameliorate the unequal societal condition is left to the State, provided it is geared to producing equality in the quality of life of that handicapped area subject, of course, to basic recognition of individual quality and criteria of efficiency.

The emphasized portion does not require any further elaboration which has application for all the time to come.

14. Further, it would be worthwhile to quote similar observations of the Supreme Court in *M.R. Mini (Minor) Represented by her Guardian and Father M.P. Rajappan Vs. State of Kerala and Another*, wherein ad hoc arrangements are frowned upon by the Supreme Court in the following words:--

"5. Too long has the State been seeking ad hoc solutions and improvising remedies where comprehensive studies and enduring recipes are the desideratum. To keep the education situation uncertain across the nation and the fate of students of higher education tense or in suspense with annual challenges in Court or agitational exercises in the streets is dangerous procrastination fraught with negative results where a creative undertaking of responsibility to find an enduring answer to a chronic problem is the minimum that the country expects of the concerned State instrumentality."

15. Such a situation could have been avoided if the State Government had followed Section 65 of the Maharashtra Universities Act, 1994. Section 65 of the said Act requires that Model Rules for admission should be published in the University Gazette or Official Gazette six months in advance in the interest of students. Though these Rules are not framed u/s 65, in the interest of students, it would be necessary to publish them or make them known earlier and not just on the eve of admission affecting prejudicially many students. In fact, Section 65 is statutory recognition of well established principle that fair play requires that any major change in the admission process should be made known to the students well in advance. Instead of exercising this power in the manner prescribed by the Act, last minute changes are made by the Respondents in admission Rules which affect the young students adversely and keeps the coveted education system tense or in suspense with annual challenges in Court which increases the work-load of the Court unnecessarily. In paragraph 6 of our order dated 29th August, 1996 we have pointed out how the prospectus came to be issued on 6th June, 1996 and there was no chart annexed to that prospectus. We have also pointed out that admissions were to be completed by 15th July, 1996. However, the chart showing the distribution of seats was produced for the first time in the Court on 27th August 1996. All this would certainly affect prejudicially the career of brilliant students seeking admission to medical colleges.

16. Dealing with similar rules relating to distribution of medical seats on the basis of districts in the case of *Minor P. Rajendran Vs. State of Madras and Others*, the Court held it to be discriminatory. The Court observed that the object of selection of candidates must be to secure the best possible talent so

that the country may have best possible doctors and if that is the object it must necessarily follow that the object would be defeated if seats are allocated district by district. The Court then held as under:--

"..... It is true that Art. 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, even assuming that territorial classification may be reasonable classification. The fact however that the classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned 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. If anything, such allocation will result in many cases in the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from either of the two sources."

The Court further dealt with the justification put forward on behalf of the State Government in support of the district wise allocation. It was stated on behalf of the State that there were better educational facilities in Madras city as compared to other districts of the State and, therefore, if district wise selection is not made, candidates from Madras city would have an advantage and would secure many more seats than justified on the basis of proportion of the population Madras city compared to the population of Madras city compared to the population of the State as a whole. That contention was rejected by the Court by holding that there was no justification for district wise allocation which results in discrimination, even assuming that candidates from Madras City will get a larger number of seats in proportion to the population of the State. While rejecting the said contention the court held as under:--

"..... This in our opinion is no justification for district wise allocation, which results in discrimination, even assuming that candidates from Madras city will get a larger number of seats in proportion to the population of the State. That would happen because a candidate from Madras city is better. If the object is to attract the best talent, from the two sources, district wise allocation in the circumstances would destroy that object. Further even if we were to accept this contention that would only justify allocation of seats between the city of Madras on one side and the rest of the State on the other and not a district wise allocation throughout. But apart from this, we are of opinion that the object being what we have indicated, there is no reason why there should be discrimination which would go against the candidates from Madras city. We may add that candidates who pass from Madras city need not all be residents of the city for it is common knowledge that schools and colleges in the capital city attract students from all over the state because of better educational facilities."

The Court further dealt with another justification which was attempted by the State 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 and, therefore, seats are required to be distributed on the basis of university wise population. The Court negated the said contention by holding as under:--

"..... 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 negativity 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 opinion that allocation of seats on district wise basis is violative of Art. 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 Art. 14, for no justification worth the name in support of the classification has been made out. We therefore hold that R.8 providing for district wise allocation is bad, as it violates Art. 14 and we hereby strike it down."

For similar reasons, we reject the justification sought by the State Government in the present case that there are less medical colleges in some regions of the State and, therefore seats are required to be distributed on the basis of university wise population. In the present case also distribution of seats on the basis of passing examination from a particular university region would result in discrimination inasmuch as better qualified students from one region may be rejected while less qualified students from other region may be admitted from either of the two sources on the basis of additional reservation of seats. Further, it would be difficult to state that those students who have appeared for H.S.C. Examination from a particular university region are residents of that area. By chance, a student may appear from Mumbai or Pune or Nagpur universities because of various fortuitous circumstances. That is to Pune or Nagpur Universities regions need not all be residents of those cities attract students from all over the State because of better educational facilities.

17. It is next submitted that rule 4.1.2.1 is vague and unreasonable in nature. This submission deserves to be accepted. The Rule does not lay down whether general population in the University area or three region-wise is to be taken into consideration or whether students population of university area wise or three regionwise is to be taken into consideration. The reply filed on behalf of the State

shows that university population is to be taken into consideration. However, for this also no prescribed method for calculating the population is provided. Whether the census figure as published every 10 years will be taken into consideration or whether the population is to be counted every year is not clear. If the population is to be calculated every year, as the population is not stagnate, then this Rule is having potentially to invite flood of litigation every year. Further, there is no standard laid down as to who is eligible to claim the seats from a particular region i.e. whether a student who has studied in that particular university region or one who resides there. If the same is on the basis of residence, then no particulars are given as to how many years' stay in the university region is required for claiming the seat. The Supreme Court in *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, , dealt with admissions to M.B.B.S Course in Jammu and Kashmir. An order was issued by the Government making the classification on the basis of regional imbalance . It was held that such classification was vague in the absence of identification of the areas suffers from such imbalance. The argument that certain areas suffer from imbalance and were background was rejected as there was no identification of such area. Hence, in our view, Rule 4.1.2.1 is vague and is without any guidelines which leads to excessive delegation of power.

18. It is further submitted that R.4.1.2.1 is inconsistent with R. 4.1.2.3 Rule 4.1.2.3 was given further break up. Rule 4.1.2.1 is quoted above. Rules 4.1.2.2, 4.1.2.3 and 4.1.2.3.2 are as follows:--

4.1.2.2 Out of the seats at the disposal of the Competent Authority, reservations as specified subsequently will be worked out as stated at Rule 4.1.2.3.2. However these will be allotted within the University area component.

4.1.2.3. After the exclusive of the seats of reservations stated in Rule 4.1.2.2 above, the remaining seats will be available for Open Merit category. Out (sic)

4.1.2.3.2 The remaining 70% seats will be filled in by the Designed Authorities from amongst the applicants who have passed the 12th Std. (or equivalent) examination from the school/colleges situated in the concerned University area as per rule.

19. Rule 4.1.2 deals with seats at the disposal of the Competent Authority. As far as Government colleges and private aided colleges are concerned, 15% of available seats are to be reserved for candidates of All India Entrance Examination. Remaining are at the disposal of the Competent Authority. Rule 4.1.2.2 says that reserved seats will be allotted within the University area component. Rule 4.1.2.3 speaks of availability of open merit category seats after exclusion of the reservation as stated in Rule 4.1.2.3.2 Rule 4.1.2.3.1 speaks that 30% of seats being made available amongst the applicants from the State Merit List. The effect this may be demonstrated by an illustration take the case that Bombay University is having 400 seats, if 50% reservation for All India Entrance Examination is deducted, there shall be 340 seats available . There

shall be 170 seats for reserved candidates as per Rule 4.1.2.2. They are to be allotted within the University area component. Then there shall remain 170 seats for Bombay University has to lose 100 seats for only 70 seats remaining for open category students, who are from Bombay University region. These 70 seats shall be divided into 70% and 30% under Rule 4.1.2.3.1 and 4.1.2.3.2 . The chart produced on behalf of the State does not take into consideration the phrase "will be allotted within the university area component" as mentioned in Rule reasons that the reserved candidates are not required that the reserved candidates are not required to go away from their home place and spend more money. Therefore, this is not only inconsistent, but it would produce unjust result.

20. These are the reasons which weighed with us while passing the operative order quoted above.

Order accordingly.