

(2016) 09 MP CK 0062

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14496 of 2016

Rudrika Pushpraj Bhatele

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 15, Article 226

Citation : (2017) 1 MPLJ 472

Hon'ble Judges : R.S. Jha and C.V. Sirpurkar, JJ.

Bench : Division Bench

Advocate : Shri T. S. Ruprah, Learned Senior Counsel, Shri Shailesh Tiwari, Shri Vipin Yadav, Shri Aditya Sanghi with Shri Harpreet Ruprah, Advocates, for the Petitioners; Shri Deepak Awasthi, Govt. Advocate, for the Respondent/State

Final Decision : Disposed Off

Judgement

R.S. Jha, J. - As the aforesaid petitions raise a common issue for decision before this Court, they are heard and decided concomitantly.

2. The petitioners are students who have passed their Higher Secondary School Certificate Examination (10+2) from various schools situated within the State of M.P and have also been placed in the select/merit list prepared pursuant to the National Eligibility cum Entrance Test (NEET) conducted by the Central Board of Secondary Education (CBSE) for the purposes of selecting candidates for making admissions in the Under Graduate (MBBS/BDS) courses in various Medical Colleges.

3. The petitioners have filed the present petition challenging the constitutional validity of Regulation 6 of the Madhya Pradesh Sahayata Na Paane Waale Niji Chikitsa Mahavidyalayon Evam Chikitsa Mahavidyalayon Mein M.B.B.S Tatha B.D.S Pathyakram Mein Pravesh Ki Patrata, Pravesh Ki Reeti Evam Sthanon Ke Aarakshan (Jismein Videsh Mein Rah Rahe Bharatiya Nagrikrikon Va Anivasi Bharatiya Abhyardhiyoin Ke Liyea Sthanon Ka Aarakshan Sammillit Hai) Ke Liye

Viniyam, 2016 (hereinafter referred to as the Regulation of 2016), notified by the State in exercise of powers under section 13 of the Madhya Pradesh Niji Vavsaik Sikshan Sanstha (Pravesh Ka Viniman Evam Shulk Ka Nirdharan) Adhiniyam, 2007, (hereinafter referred to as "the Act of 2007") which dispenses with the requirement of domicile/permanent residence criteria in respect of General Category candidates in Private Medical Colleges thereby throwing open the General Category seats in the MBBS and BDS courses in private medical and dental colleges situated within the State of M.P. to students who are not permanent residents or local residents of the State of M.P.

4. The petitioners have assailed the constitutional validity of Regulation-6 of the Regulations of 2016, on the ground that it violates the petitioners' fundamental rights under Article 14 of the Constitution of India, as no other State has thrown open or made available any of the MBBS and BDS seats available in Government and Private Medical and Dental Colleges in those States to students of the State of M.P. or to any other student residing out of their respective State. It is submitted that the petitioners who are resident of M.P. have no opportunity and are denied the right to seek admission in MBBS and BDS seats in Government and Private Medical and Dental Colleges situated in other States on account of reservation in the Rules and Regulations notified by the other States which provide for reservation in favour of local/permanent residents of the respective States and though the State of M.P. should also have made similar provisions for reservation in favour of local/permanent residents of the State of M.P., the State, instead of doing so, has thrown open the MBBS/BDS seats available to General Category students in the private medical colleges in the State of M.P. to students who are not resident of M.P. as a result of which the students like the petitioners are, on the one hand, denied opportunity to obtain admission in medical colleges outside the State of M.P. and on the other hand are required to face unnecessarily stiff competition for obtaining admission in the MBBS/BDS seats in private medical colleges situated within the State of M.P. and; therefore, the impugned Regulation results in treating the petitioners discriminately thereby violating their Fundamental Rights under Article 14 of the Constitution of India.

5. The learned counsel for the petitioners in support of their submissions have filed copies of the Rules/Regulations notified by the State of Maharashtra, Uttar Pradesh, Gujarat, Orissa and Rajasthan to demonstrate that seats for MBBS and BDS courses in all the States are reserved for local and permanent residents of their respective States.

6. During the course of hearing the learned counsel for the petitioner has placed before this Court the Rules framed by 20 States in the country all of which provide for reservation based on domicile/permanent residence in MBBS and BDS seats which are to be filled up in Private Medical Colleges. It is stated by the learned counsel for the petitioners that 20 States in the country have provided for reservation while 5 States have no Medical Colleges. It is emphatically stated by the learned counsel for the petitioners, which fact is not denied by the learned

counsel for the respondent/State, that no other State except the State of M.P has opened up its MBBS and BDS seats available in Private Medical Colleges for being filled up by students of other States.

7. It is submitted by the learned counsel for the petitioners that looking to the facts that all the other States have reserved the seats on the basis of domicile/permanent residence in MBBS and BDS courses in Government and Private Medical Colleges, the State of Madhya Pradesh is also obliged to provide the said reservation in order to provide equality of opportunity to local students. It is submitted that the State, which is constitutionally obliged to protect the interest and further the progress of the residents of the State has, on the contrary, become a perpetuator of injustice only at the behest of Private Medical Colleges which are only interested in profiteering and ensuring that all their seats are filled up and they are able to earn more at the cost of eligible students of M.P.

8. The petitioners have also contended that the respondent/State has notified two sets of Rules/Regulations for making admission in MBBS/BDS seats within the State of M.P.. It is submitted that one set of Rules relate to admission in Government Medical Colleges where under all the seats available have been reserved for local/permanent residents of the State of M.P. whereas the State has framed a different set of Regulations, i.e., the impugned Regulation of 2016 regulating admissions in private medical and dental colleges in the State of M.P where under no such stipulation or reservation for local/permanent resident of the State of M.P. is provided as far as the seats available for general category candidates are concerned.

9. It is submitted that in the circumstances the act of the respondent/State in providing two different sets of Regulations for making admissions to MBBS/BDS courses amounts to discrimination as all students seeking admission, whether in Government or Private Colleges, belong to the same class. It is submitted that the students seeking admission in private medical and dental colleges are subjected to unequal and discriminatory treatment by not providing any reservation in their favour in the Private Colleges.

10. The learned counsel for the petitioners submits that as no reason or purpose for this discriminatory treatment and for withdrawing reservation in favour of local/permanent resident of the State of M.P. is discernible from the Rules nor is the object and purpose for which such reservation been done away with fathomable, therefore, the Regulation is contrary to Article 14 of the Constitution of India and be declared unconstitutional.

11. The learned counsel for the petitioners submits that the standard of education in other States is different and there is extreme disparity in the quality and standard of education in other States as compared with the State of M.P and the facility of coaching etc., available for preparing for the medical entrance test is also vastly different. It is submitted that this is apparent from the fact that out of the 550 seats made available in private medical colleges that were put up for

counselling in the first round, 500 seats have been provisionally allotted to students outside the State of M.P. It is submitted that a student who is ranked nearly 5706 in the select list of the State of U.P is ranked at Sr. No.244 in the merit list in the State of M.P. It is submitted that from a perusal of the aforesaid facts it is apparent that the impugned Regulation results in forcing the petitioners to compete with persons who have more advantage and are better placed than the petitioners as far as standard of education is concerned and, therefore, amounts to treating unequals as equals and unreasonable classification and violates the petitioners' fundamental rights under Article 14 of the Constitution of India.

12. It is submitted that while the students in the other States have the opportunity to seek admission in the seats available in their State on account of reservation in their favour under the concerned Rules and Regulations of that State, they have also been given opportunity, by the impugned Regulation No.6 of the Regulations of 2016, to seek admission in MBBS/BDS courses in the State of M.P. whereas no such dual opportunity is available to the students studying in the State of M.P. on account of reservation in favour of the local/permanent resident made in the Rules/Regulations of other State and, therefore, the impugned Regulation results in denial of equality of opportunity to the petitioners which is the cardinal principle of Articles 14 & 15 of the Constitution of India. It is stated that the students of M.P are the only ones in the entire country who are subjected to this inequality and, therefore, the impugned Regulation deserves to be quashed.

13. The learned counsel for the petitioners submits that the impugned Regulations have been framed only to benefit the persons running private medical colleges in the State of M.P. so as to enable them to charge a heavy undisclosed amount of fees for granting admission to students outside the State of M.P and thereby permitting profiteering in education which is not permissible.

14. It is submitted that the impugned Regulation has been framed only with a view to permit private medical colleges in the State of M.P. to indulge in malpractice as allotment of seats to students out of the State are withdrawn at the last minute thereby permitting them to fill up the seats at the last moment by privileged and preferred candidates by charging huge sums of money. The allegations in this regard have been made by the petitioners in paragraphs 6.4 in W.P No.15555/2016 in the following terms :-

"6.4 That, it is a bigger scam than the scam of VYAPAM because ultimately in the mid night of 30th of September, 2016 many candidates who are not domiciles of Madhya Pradesh but have been provisionally allotted the seats will leave the seats in bulk in private medical colleges and then these seats will be literally auctioned for sale by the private medical colleges to the tune of Rs.75 Lacs to Rs. 1 Crore per seat and candidates who are not meritorious and have not even appeared in NEET ? 2016 will get admission by back door entry and because the cut off date is 30th of September, 2016, the private medical college will enjoy the

booty and non-meritorious candidates will become doctors in the State of M.P. and then the bureaucrats of Madhya Pradesh will try to beat the bush by showing crocodile tears in favour of meritorious candidates but the candidates who have burned the midnight oil will suffer irreparable injury at the cost of candidates who were non-meritorious but will get a seat of MBBS exactly at the midnight of 30th September, 2016 and this thing is going on for more than a decade and till date the bureaucrats are unable to control it in the State of M.P."

15. The learned counsel for the petitioners submits that the fact that the private medical colleges are indulging in such malpractice, is affirmed and confirmed by this Court in the case of *Ku. Prachi Mantri v. State of M.P.* 2005 (3) MPHT 19 (NOC) wherein Modern Dental College was held guilty of the same and appropriate directions were issued against it and the order passed by the Supreme Court in Original Contempt Petition (C) No. 390/2011 wherein the Supreme Court has held that the Peoples College of Medical Science had deliberately violated the orders and directions of the Supreme Court and had made illegal admissions and by recording the aforesaid finding has imposed a fine of Rs.50 lakhs on that College. It is submitted that the Court on taking note of the conduct of Private Colleges has taken away their powers to make admission and has ordered that admissions shall be made pursuant to the NEET conducted by the CBSE and that counselling shall be conducted by the State. It is submitted that in view of the aforesaid, the fact that the Private Medical Colleges are indulging in malpractice is clearly established and is in fact not denied by the State in its return.

16. It is further submitted by the learned counsel for the petitioners that the impugned Regulation is not in the interest of the respondents or the State of M.P. as these students who are from outside the State of M.P., after completing their MBBS/BDS course, would go back to their State and would not render any service to the residents of the State of M.P. which is the very object and purpose for which the State and the Medical Council of India have permitted the establishment of private medical colleges within the State of M.P. It is stated that it is the primary duty of the State of M.P. to provide adequate medical facilities and qualified doctors to the residents of M.P. but if the impugned Regulation is permitted to stand, it will result in depriving the residents of M.P. of proper medical and health assistance and is, therefore, contrary to the very purpose and object for which medical colleges were established and the reason for which medical education is imparted in the State of M.P.

17. The learned counsel for the petitioners submits that in view of the aforesaid grounds, Regulation No.6 of the Regulations of 2016 be declared unconstitutional and the students who are not local and permanent residents of the State of M.P. be prohibited from being given admission in private medical colleges in the State of M.P. by directing the State to apply the domicile/permanent resident criteria to the admissions sought to be made in the General Category seats in Private Medical and Dental Colleges in M.P.

18. The respondents, per contra have filed a return and have stated that the State has the power as well as the legislative competence to enact the Regulation of 2016. It is stated that the impugned Regulations have been framed in exercise of powers under section 13 of the Act of 2007, validity of which Act has been upheld by the Supreme Court in the case of Modern Dental and Research Centre and others v. State of M.P and others, (2009) 7 SCC 751. It is submitted that as the State has legislative competence to frame the Regulations and also the powers to prescribe the mode and manner of admission in medical colleges, the challenge to the impugned Regulations being misconceived deserves to be dismissed.

19. The learned Government Advocate submits that the Supreme Court has settled the law to the effect that admissions to MBBS/BDS seats in medical colleges should be made strictly in accordance with merits and in no circumstances can merit be compromised. It is submitted that the respondent/State, with a view to select the most meritorious students from all over the country, have done away with the provisions for reservation on the ground of domicile and permanent residence and, therefore, as the impugned Regulation is in furtherance of a laudable object and purpose, it deserves to be upheld.

20. The learned Govt. Advocate for the respondent/State submits that the facts stated by the petitioners themselves in the petition establish that the very object and purposes for selecting the most meritorious students available is in fact achieved by Regulation-6 as meritorious students from outside the State have been provisionally allotted the seats in private medical colleges in the first round of counselling. It is stated that it is an undisputed fact that the students granted provisional admission in the first round of counselling are more meritorious than the petitioners and, therefore, the very basis of filing the present petitions is misconceived.

21. The learned Government Advocate appearing for the respondent/State submits that bald allegations regarding malpractice have been made by the petitioners in the petitions which are totally unsubstantiated and, therefore, such unsubstantiated allegations which have been made on account of frustration deserve no consideration more so, as the instances of malpractice in admission or charging heavy fees, if any, can be taken up by any aggrieved person before the Committee constituted by the State under the Act of 2007 which has been empowered to take necessary corrective measures.

22. The learned Govt. Advocate further submits that the Government has provided for reservation in Government Medical Colleges based on domicile/permanent residence keeping in mind the local needs of the State. It is submitted that Graduates and Post Graduates from the Government Medical Colleges after obtained degrees would serve the residents of the State by providing medical and health facilities to them. The learned Govt. Advocate for the respondent/State along with its return has filed documents to indicate that the criteria of domicile/permanent residence is applicable while making

admission to all seats in the State of M.P. except general category seats available in private medical colleges.

23. It is pertinent to note that while the aforesaid reason has been mentioned by the respondents in the return for reserving seats for domicile/permanent residence of M.P. in Government Medical Colleges, no reason, object, purpose or rational for opening up the seats in Private Medical Colleges has been mentioned or stated by the respondent/State in its return.

24. It is an admitted and undisputed fact that all the students including the petitioners, who have now sought admission in various Medical and Dental Colleges in the State have participated in NEET Examination and having obtained more than the cut-off marks, have been included in the merit-list. It is also an admitted and undisputed fact that while selection of the candidate has been made on the basis of the NEET Examination conducted by the CBSE, admissions to the seats available in each State are to be and are being made in accordance with the Rules and Regulations framed by the respective States. It is also undisputed that after the decision in the case of P.A. Inamdar (supra) the State Government enacted the Act of 2007, which governs admissions and the quantification of the fee to be charged by the Private Medical Colleges and Dental Colleges. The State has also framed rules in this regard i.e. the Rules of 2008. It is also an admitted and undisputed fact that after the NEET Examination was held and during the pendency of the process for admission the respondent/State has notified the impugned Regulations in exercise of powers under Section 13 of the Act of 2007, which are subject matter of challenge before this Court in the present batch of petitions.

25. It is pertinent to note that vide order dated 22.9.2016 passed in Contempt Petition (Civil) No.584/2016 filed by the State, the Supreme Court has clarified its judgment in the case of Modern Dental and Research Centre (supra) and has held that the process of admission as well as counselling has to be done afresh by the State after quashing the counselling undertaken by the State as well as the private colleges.

26. At this stage, we may also take note of certain other admitted and undisputed facts before we advert to the issues raised in the petition.

27. In all other States except the State of M.P. admittedly and undisputedly the Rules that have been framed by the concerned State provide for reservation in favour of local/permanent residents of the State in private as well as unaided medical colleges. In fact, all the Rules of other States produced before this Court provide for such reservation except for the impugned regulation of 2016 notified by the State of M.P. It is also admitted and undisputed that the students of all the other States are eligible to seek admission in private medical colleges not just in their respective State but also in the State of M.P., whereas local/permanent residents of M.P. are not eligible to seek admission in private or Government medical colleges in any other State and even in the State of M.P.

they have to compete with the students of other States while seeking admission in private medical and dental colleges as the selection is based on the merit-list prepared pursuant to the NEET examination conducted by the CBSE.

28. From the facts that have been brought on record and have been placed before this Court during arguments by both the parties, it is evident that out of the total number of MBBS and BDS seats available for admission in Government Medical Colleges 15% are reserved for All India Quota and out of the total number of seats of MBBS and BDS seats available to Private Medical Colleges 15% seats have been reserved for NIR quota. As informed to this Court during the course of argument, 23 seats out of the total 150 seats sanctioned in each of the Private Medical Colleges have been reserved for the NIR quota. Out of the remaining seats available in both, the Government and Private Medical Colleges 50% of the seats have been reserved for the SC, ST and OBC category. In addition to the aforesaid 15% reservation in Government Medical Colleges it has also being brought on record by the learned Govt. Advocate that the seats in Government Medical Colleges are also reserved for Government of India employees, military personals, students from Jammu & Kashmir and physically handicapped. Reservation for physically handicapped have been also be made in Private Medical Colleges. As far as Government Medical Colleges are concerned, the seats remaining after making reservation for All India Quota, SC, ST & OBC and other categories, all the remaining seats are reserved for general category candidates who are domicile/permanent residents of the State of Madhya Pradesh. However, as far as the general category seats available in Private Medical Colleges are concerned, the same have been thrown open for granting admission to students from all over the country as the requirement of domicile/permanent residence has not been applied to such seats. According to the return filed by the State as many as 570 MBBS and BDS seats in Private Medical Colleges have been thrown open for admission of students from all over the country.

29. The aforesaid facts are clearly evident from a perusal of the return filed by the respondent/State as also the rules relating to admission in Government Medical Colleges filed along with the petition as Annexure P-1 and the impugned Regulations of 2016 filed along with W.P.No.15555/2016 as Annexure P-2.

30. It is also an undisputed and undenied fact that in view of the aforesaid provisions and the Rules of various States and the State of M.P., out of the 550 seats that were put up for counselling in the first round, 500 seats have been provisionally allotted to students from outside the State of M.P., whereas the students who are local/permanent residents of the State of M.P. have been provisionally allotted only 50 seats. However this provisional admission made by Private Medical and Dental Colleges has now been quashed by the Supreme Court in the Contempt Petition filed by the State and fresh admissions have been directed to be made by the State through counselling which is not to be conducted by the State.

31. The petitioners in Writ Petition No.14959/2016 has also brought on record that one Shubham Pathak, who is shown at Sr. no.5706 in the merit list in the State of U.P. drawn up pursuant to the NEET examination finds place at Serial no.244 in the merit list drawn up in the State of M.P. pursuant to the impugned regulation which permits admission to students outside the State of M.P. Prima facie the aforesaid statistics point towards the disparity in the infrastructure and the standard of school education being imparted in M.P. as compared to other States.

32. We may profitably take note of the fact that previously MBBS and BDS seats in Medical Colleges all over the country used to be allotted only to those students who were local and permanent residents of the State in which the medical college was situated. Such reservations based on domicile and permanent residence in a particular State or in respect of a particular University were challenged before the Supreme Court in the case of Dr. Pradeep Jain (supra) and the Supreme Court while holding such wholesale 100% reservation to be unconstitutional drew up two different schemes for Post-Graduate and Under-Graduate courses in Medical Education. As far as Under-Graduate medical courses are concerned, i.e. MBBS and BDS courses with we are concerned in the present petitions, the Supreme Court held that at least 30% of the total seats available should be thrown open for admission on All India basis and the maximum extent of reservation for local/permanent residents of the State should be restricted to 70%. Subsequently, on applications being filed by several States as well as the Union of India, the Supreme Court in the case of Dr. Dinesh Kumar and others v. Motilal Nehru Medical College, Allahabad and others, (1986) 3 SCC 727, increased the percentage of reservation in MBBS and BDS courses in favour of local/permanent residents of and State to 85% and held that not less than 15% of the total number of seats in Medical and Dental institutions, without taking into account any reservation validly made, shall be filled up on the basis of an All India Entrance Examination. Since then this 15% reservation of seats has been referred to as an All India quota for which students from any part of the country can compete and obtain admission by participating in the All India Entrance Examination which is conducted by the CBSE.

33. The issue regarding reservation of 85% of the seats in favour of local/permanent residents of the State was taken by the Supreme Court on several occasions in several cases and has been upheld and affirmed. The scheme for admission to MBBS/BDS courses as framed by the Supreme Court in the case of Dr. Pradeep Jain (supra), and as modified in a series of decisions rendered in the case of Dr. Dinesh Kumar (supra), framed after giving due notice and opportunity of hearing to all States and enforced in all the States in the country pursuant to strict directions issued by the Supreme Court except in the State of Andhra Pradesh and Jammu & Kashmir has become the law of the land and is binding on all Courts as well as authorities in view of Articles 141 & 144 of the Constitution of India which fact has also been considered and reiterated by a Five Judges Bench of the Supreme Court in reference to the reservations in P.G. courses in the

case of Saurabh Chaudri and others v. Union of India and others, (2003) 11 SCC 146, while quoting from the decision in the case of Dr. Pradeep Jain (supra) in the following terms in paras 49 & 50:-

"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:

50. A distinction was made therefore between the Undergraduate Course i.e. MBBS Course and Post Graduate Medical Course as also super speciality courses. The Court, therefore, sought to strike a balance of rights and interests of all concerned."

34. With the passage of time, as several private medical colleges were set up all over the country and as several issues regarding control over the same were raised, the Supreme Court in the cases of T. M. A. Pai Foundation and others v. State of Karnataka and others, (2002) 8 SCC 481, Islamic Academy of Education and Another v. State of Karnataka and others, (2003) 6 SCC 697 and P.A. Inamdar and others v. State of Maharashtra and others, (2005) 6 SCC 537, has held that the right to establish, maintain and operate Private Medical and Dental Colleges was a fundamental right granted under Article 19(g) of the Constitution of India, however the said right was subject to reasonable restrictions which could always be imposed upon these institutions in view of Article 19(6) of the Constitution of India.

35. Subsequently, in the cases of Medical Council of India v. Christian Medical College, Vellore and others, (2014) 2 SCC 305 and Modern Dental and Research Centre and others vs. State of M.P and others, (2009) 7 SCC 751, the Supreme Court has held that the State can issue any order to ensure fairness and transparency and take measures to see that admissions are made strictly on the principles of merit and the State can regulate the process of admission and that such a Regulation is not an unreasonable restriction on the rights of the private unaided medical colleges and that such admissions should be made by determining the merits by holding a National Eligibility cum Entrance Test (NEET).

36. Pursuant to the aforesaid decisions of the Supreme Court, like the 15% All India quota, the remaining 85% seats have now to be filled up by adjudging merit through a single common entrance examination that is held at the national level known as NEET which has to be conducted by the CBSE.

37. Before we proceed to consider the rival submissions of the parties in the backdrop of the aforesaid facts we think it appropriate to take note of the fact that the Supreme Court, in spite of the lofty ideals of Article 14 and 15 of the Constitution of India, after taking into consideration ground realities has upheld reservations based on domicile/permanent residence and institutional reservations in the cases of Dr. Jagdish Saran and others v. Union of India,

(1980) 2 SCC 768, AIR 1955 SC 334 D.P. Joshi v. State of Madhya Bharat, Dr. D. N. Chanchala v. The State of Mysore and Others, 1971 (2) SCC 293, Kumari N. Vsundara v. State of Mysore and Another, 1971 (2) SCC 22 and Dr. Pradeep Jain and others v. Union of India and others, (1984) 3 SCC 654, Dr. Dinesh Kumar and others v. Motilal Nehru Medical College, Allahabad and others, (1986) 3 SCC 727, Ahmedabad Municipal Corporation and Another v. Nilaybhai R. Thakore and Another, (1999) 8 SCC 139, Anant Madaan v. State of Haryana and others, (1995) 2 SCC 135 and Indian Medical Association v. Union of India, 2011 (7) SCC 179, and has also upheld the Rules which provided for reservation on the basis of domicile/permanence residence in a particular State. Similar reservation to a lesser extent in P.G. Courses has also been upheld by a Bench of five Judges in the case of Saurabh Chaudhari and others v. Union of India and others 2003 (11) SCC 146.

38. A perusal of the aforesaid decisions of the Supreme Court clearly indicated that reservations based on domicile/permanent residence made by State in Medical and Dental Colleges for the purposes of making admission in MBBS/BDS courses has been upheld and that the Supreme Court has held that such reservations are not contrary to the principles of equality enshrined under Articles 14 & 15 of the Constitution of India.

39. However, the situation in the present cases is totally different. As the facts of the case disclose, the State of M.P., instead of making reservations in favour of permanent residents of M.P. or on the basis of domicile, has in fact opened up and thrown open MBBS and BDS seats available in private Medical and Dental Colleges for the purposes of being filled up by candidates from other States on the basis of merit-list prepared in the NEET Examination and the petitioners in the present petitions seek a direction that the State should strictly apply the requirement of domicile/permanent residence while making admissions and exclude those candidates/students who do not fulfil the domicile/permanent residence criteria.

40. The contention of the petitioners has stated above, is based on the ground that the throwing open of the seats to students of other States amounts to denial of equality of opportunity and a level playing field to the students of M.P as none of the other States in the country have made available and opened up the admissions in the MBBS and BDS seats available in the other States to the students of M.P. or for that matter to any student who is not a domicile/permanent residents of the State concerned.

41. At this stage we think it apposite to state that we can find no fault in the impugned Regulation as far as the authority or the legislative competence of the State to enact the Regulation is concerned. We may also state that ideally speaking, seats in all the Medical Colleges in the country should be available for admission to each and every citizen of India as stated by the Supreme Court in the decisions referred to by us. However, we are not adjudging the constitutional validity of the Rules on the basis of its legislative competency or its authority to

deserve the seats. We are in fact examining the constitutional validity of the Rules on the Fundamental principles of equality, as the very basis, object and purpose of Articles 14 & 15 of the Constitution of India, is to bring about equality and to guarantee equality of opportunity and prohibit restriction or denial of opportunity and, therefore, we proceed to consider the validity of the Rules on the ground as to whether it results in denial of equality of opportunity to the petitioners and on the ground as to whether the Rule is based on any laudable, perceptible, acceptable, rational or object which is discernible and is sought to be achieved by the impugned Regulation.

42. We are also examining the validity of the rules on the basis of the settled law that classification should be just and equitable and must result in providing equality of opportunity and, therefore, it must be founded on intelligible differentia which on rational grounds distinguishes persons grouped together from those left out and must bear just and reasonable relation to the object sought to be achieved.

43. It is not worthy that in the case of Dr. Pradeep Jain (supra) the Supreme Court has held that the State could departure from the principles of selection on merits on two, amongst other, grounds namely; (I) the State interest in providing adequate medical services to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors, and; (ii) backwardness of a particular region.

44. The facts placed before us prima facie indicate that the students in the State of M.P. are at present not ready to cross-swords and compete with the students from outside the State of M.P. In the case of Dr. Pradeep Jain (supra) the Supreme Court gave considerable importance and ultimately upheld the reservation for local/permanent residents of a State to a great extent (ultimately upto 85%) by taking note of the fact that the local/permanent residents were reasonably expected to serve as doctors being inhabitants of the State, therefore, granting such reservation would serve the object and purpose of providing the best medical aid to the residents of the State in the following terms:-

"19. ?Theoretically, of course, if admissions are given on the basis of all India national entrance examination, each individual would have equal opportunity of securing admission, but that would not take into account diverse consideration, such as, differing level of social, economic and educational development of different regions, disparity in the number of seats available for admission to the MBBS course in different States, difficulties which may be experienced by students from one region who might in the competition on all India basis get admission to the MBBS course in another region far remote from their own and other allied factors. 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 national 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 the States and States 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 recognised 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. There would also be a number of students who, if they do not get admission in a medical college near their residence and are assigned admission in a far off college in another State as a result of open All India competition, may not be able to go to such other college on account of lack of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in a medical college. It would be tantamount to telling these students that they are given an opportunity of taking up the medical course, but if they cannot afford it by reason of the medical college to which they are admitted being far away in another State, it is their bad luck: the State cannot help it, because the State has done all that it could, namely, provide equal opportunity to all for medical education. But the question is whether the opportunity provided is real or illusory? We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should be no distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education....."

45. The issue involved in this petition requires to be examined in the light of the

law laid down by the Supreme Court. While the respondents in the return have stated that the object and purpose for reservation of general category seats in Government Medical Colleges for the domicile/permanent residence of M.P. is that the Government is funding the Colleges looking to the local needs of the State for the requirement of doctors, but no such object, purpose, rational or reason for not making similar reservation for the domicile/permanent residence in respect of the seats available in Private Medical Colleges has been stated by the respondents in the return nor has any explanation in this regard been placed before this Court during arguments accept for stating that admissions in Private Medical Colleges is required to be made on merits.

46. In the light of the local needs the shelter of merit taken by the State to justify the impugned regulation is also misconceived. From a perusal of the decision of the Supreme Court rendered in the case of Dr. Jagdish Saran (supra), it is apparent that no sacrosanctity can be attached to selection based on written test alone as such a written test cannot be taken to be absolute and perfect measure for determining merit and that the criteria of merit does not mean obtaining higher marks in the entrance test alone and the fact that a particular candidate is willing to reside in the State and render medical and health services within the State is also to be treated as a merit criteria and on that basis such a person can be treated as more meritorious than those who have obtained more marks in the written examination but are not available for rendering services or providing health or medical services in the State concerned in the following terms:-

"20. Before moving to the next aspect we may touch upon a slightly different angle which opens up a new point of view. What is merit or excellence ? If potential for rural service or aptitude for rendering medical attention among backward people is a criterion of merit and it, undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears-then, surely, belonging to a university catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases. Marks on this basis will take us to the same preference as reservations for in-university candidates. Here we are not preferring one with less marks, but adopting a holistic manner of marking linked up with backward settings, institution oriented and like considerations has some meaning."

47. When we take into consideration the aforesaid aspects and the decisions of the Supreme Court in this regard, we are unable to understand the non-existing distinction sought to be drawn by the State in respect of the basis for providing reservations in Government Medical Colleges and the basis for not providing reservation in Private Medical Colleges. If merit was the only criteria then all the seats should have been thrown open for admission to All India candidates and if local requirements are the deciding criteria and the primary yardstick for

prescribing reservation then the criteria for domicile/permanent residence should have been provided for all the seats. We can take judicial notice of the fact that even the States that have the maximum number of Medical Colleges and are having advanced medical facilities like Delhi, Maharashtra, Gujarat, Kerala, Karnataka, Tamil Nadu, West Bengal, Punjab etc., looking to their local needs and requirement of doctors for the purpose of rendering services in their respective States, have provided reservation on the ground of domicile/permanent residence with a view to give equality of opportunity to its students.

48. We can also profitably take note of the fact that several public interest litigations are pending before this Court, wherein the issue of up-gradation of the Government Medical Colleges in the State of M.P. and for the purpose of providing proper medical facilities, for filling up of various posts of Superintendents, Professors, Assistant Professors and Technical Staffs etc. that are lying vacant in Government Medical Colleges as well as for providing doctors and upgrading medical facilities in the primary health centers in rural areas, are pending before this Court and the State, on account of paucity of doctors, is unable to fill up the posts and in such circumstances, the State Government during the course of arguments before this Court has rightly conceded that it is in dire need of qualified doctors who, after completing their Graduate and Post Graduate medical courses, are available to render services in the State of M.P. in rural and urban areas alike.

49. In view of the aforesaid undisputed facts and circumstances, it is clearly established that the State has thrown open seats in Private Medical Colleges for being filled up on All India basis totally ignoring the specific stand taken by it before this Court regarding local needs and the urgent requirement of doctors to render services within the State of M.P.

50. From the aforesaid facts and circumstances of the case, we are of the considered opinion that the State has failed to demonstrate or place before this Court any reasonable, acceptable, object, purpose, rational or reason for throwing open the general category MBBS and BDS seats available in Private Medical Colleges to students of all other States and that this throwing open of seats is also apparently against and contrary to the very object sought to be achieved of producing local doctors who would be willing and available for serving the urban and rural population of the State as stated by the learned Govt. Advocate for the respondent/State before this Court for justifying the reservation made in respect of the general category MBBS and BDS seats in the Government Medical Colleges.

51. Even after considerable application of mind and in the absence of any reason, averment or data in the return filed by the State, we are unable to fathom and discern the object and purpose which is sought to be achieved by the State through the impugned regulation specifically when the State has not disputed the fact that the State of M.P. is in dire need of qualified Doctors who can render medical services in various parts of the State, most of which is tribal and

backward, and for that purpose eligible students who are domicile and residents of M.P. are available. We are unable to understand how the impugned Regulation would cater to the local needs when it can be realistically assumed that students from outside the State who are granted admission pursuant to the impugned regulation, would go to their respective States on completing their studies while the students of M.P. who are denied admission on account of the impugned Regulation would have no chance to pursue the MBBS/BDS course for all time to come in spite of qualifying NEET. We are, therefore, unable to find any rationale or object behind framing of the impugned rule. Apparently, the impugned Regulation is not in the interest of the State specially in the absence of reciprocal availability of MBBS and BDS seats for admission to student of M.P. in other States.

52. From the facts placed before us regarding the rules of the other States, it is clear that all other the States have reserved seats in Government and Private Medical Colleges in the MBBS and BDS courses for persons who are domicile/permanent residents of their respective States and, as observed by the Supreme Court, have clearly proclaimed "no admission to outsiders" in their rules. The State of M.P. is the only State in the entire country which has, without assigning any reason or examining the question of reciprocity or the education prospects to be provided for the students of the State of M.P. and its constitutional obligation of providing equal opportunity to its students, has thrown open the general category seats available in Private Medical Colleges for admission to students from all over the country. In spite of the inadequate health and medical services available in the State of M.P. and the urgent local needs, unlike the advanced States, the State of M.P. has dereserved the general category seats only in Private Medical Colleges which, in our considered opinion, clearly amounts to denial of equality of opportunity and a level playing field to the students of M.P. and is, therefore, violative of the cardinal principle of equality enshrined under Articles 14 & 15 of the Constitution of India.

53. The facts in the present case undisputedly indicate that while none of the other States have thrown open the seats available in private medical colleges situated within their State for admission to students outside the State concerned, the State of M.P. vide the impugned regulation has done so as a result of which while the selection for admission is conducted at the national level by holding a combined NEET examination, admissions in the MBBS and BDS seats available in the various States is granted only to local/permanent residents of their respective States on the basis of the provision of reservation made in the rules of the concerned State except in the State of M.P. The direct consequence of the aforesaid situation is that while the students of other states have the wider opportunity to take a chance of obtaining admission in their State of residence as well as in the State of M.P., such a wider and dual opportunity and level playing field is not available to a student who is a resident of M.P. as he is prohibited from seeking admission in any other State and at the same time is required to compete with the students of the other States for obtaining admission in the

MBBS and BDS courses even in respect of the seats available in private medical colleges in the State of M.P. and, therefore, apparently the impugned regulation no.6 of the Regulation of 2016, results in severely restricting and denying equality of opportunity to students seeking admission in MBBS and BDS seats in private medical and dental colleges in the State of M.P.

54. We are also of the considered opinion that when we take the bigger picture into consideration, we find that all other States in the entire country, except the State of M.P., are providing reservation on the ground of domicile/permanent residence. It then becomes clear that in such facts and circumstances, the students of the State of M.P. are being discriminated only on the ground of their being residents of the State of M.P. and, therefore, such discrimination is patently contrary to the provisions of Articles 14 & 15 of the Constitution of India.

55. In the case of Dr. Dinesh Kumar (supra) the Supreme Court had the occasion to consider and take into account a similar situation which existed on account of the fact that the students of the State of Andhra Pradesh and Jammu & Kashmir who had not opened up 15% of the seats available in MBBS and BDS courses and surrendered the same to the All India Quota and without doing so were availing of the opportunity to participate in the examination for admission under the All India quota and obtaining admission in the All India quota seats of other States. The Supreme Court after taking into consideration the aforesaid aspects held that lack of reciprocity between the State of Andhra Pradesh and Jammu & Kashmir on the one side and the other States on the other side resulted in an inequality and undue advantage to the students of Andhra Pradesh and Jammu & Kashmir and amounted of denial of equality of opportunity in the following terms in para-7:-

"7. The next question raised on behalf of some of the State Governments was that since the States of Andhra Pradesh and Jammu & Kashmir have been exempted from the operation of the main Judgment dated 22nd June 1984 and these two States would not be liable to set apart seats for admission on the basis of All India Entrance Examination and students from other States would not be entitled to compete for admission to the MBBS/BDS and post graduate courses in the medical colleges and institutions in these two States, the students from these two States should likewise not be entitled to appear in the All India Entrance Examination held for admission to the MBBS/BDS course and post graduate courses in the other States. Otherwise the result would be that the students from these two States would have an advantage over the students from other States, because they would have all the seats in the medical colleges and institutions in their own State available to them for admission without sharing even a few seats with students from other States and in addition, they would be entitled, on the basis of All India Entrance Examination, to secure admission to seats in the medical colleges and institutions in the other States whereas the students from the other States would not be entitled to the opportunity to secure admission in the medical colleges and institutions in the State of Andhra Pradesh and Jammu

& Kashmir and this would clearly amount to denial of equality of opportunity. There is in our opinion great force in this contention. If the students from the other States are not entitled to compete for admission to the medical colleges and institutions in the States of Andhra Pradesh and Jammu & Kashmir, it would clearly be inequitable to allow the students from the States of Andhra Pradesh and Jammu & Kashmir to compete for admission in the medical colleges and institutions of the other States. The lack of reciprocity would plainly and inevitably result in inequity and giving of undue advantage to students from the States of Andhra Pradesh and Jammu & Kashmir as against the students from the States of Andhra Pradesh and Jammu & Kashmir should not be entitled to appear in the All India Entrance Examination, unless the States of Andhra Pradesh and Jammu & Kashmir agree to make not less than 15% of the total number of seats for the MBBS/BDS course and not less than 25% of the total number of seats for the post graduate courses in their respective medical colleges or institutions available for admission on the basis of All India Entrance Examination."

(underlined by us)

56. We may also profitably refer to the decision of the Supreme Court rendered in the case of Dr. Jagdish Saran (*supra*). In that case the petitioners had challenged the reservation made by the Delhi University based on institutional preference in the Post Graduate course which was ultimately opposed by the Delhi University mainly on the ground of lack of reciprocity of reservation by other universities. It was the contention of the Delhi University before the Supreme Court that they were forced to increase the percentage of reservation on account of the fact that other Universities had made similar provisions for reservation as a result of which Delhi University graduates were unable to take admission in other Universities and, therefore, with a view to provide adequate and equality of opportunity to the Graduates of the Delhi University, reservation was necessitated. It was urged that reservation elsewhere had bred reservation in the Delhi University.

57. The aforesaid contention of the Delhi University was upheld by the Supreme Court by accepting that reservation was justified on account of the fact that there was no reciprocity in granting admission in other universities and on the ground that other universities had also provided for reservation. Relevant extract of the aforesaid decision of the Supreme Court which is relevant for the purpose of the present petition are in the following terms:-

"27. The conclusion that we reach from this ruling which adverts to earlier precedents on the point is that university-wise preferential treatment may still be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger sense.

32. If university-wise classification for post-graduate medical education is shown to be relevant and reasonable and the differentia has a nexus to the larger goal

of equalisation of educational opportunities the vice of discrimination may not invalidate the rule.

37. The argument urged in answer is that the doors for admission to post-graduate medical courses are almost completely closed for Delhi graduates by all other universities. So, protective reservation becomes necessary as the only hope of Delhi students for post graduate studies. Those real-life factors which show that Delhi graduates are denied de facto equality on a national scale by the exclusionism of other universities and that, therefore, they deserve sheltered equal opportunity in actuality by barriers of reservation of a high percentage of seats-such being the University's defence must be made out and not merely asserted. This contention deserves close examination, not summary rejection.

42. M.B.B.S. is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups, institution-wise chosen, without injury to public welfare. It produces equal opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise. Moreover, the better chances of candidates from institutions in neglected regions setting down for practise in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. After all, it is quite on the cards that some out of these candidates with lesser marks may prove their real mettle and blossom into great doctors. Again, merit is not measured by marks alone but by human sympathies. The heart is as much a factor as the head in assessing the social value of a member of the profession. Dr. Samuel Johnson put this thought with telling effect when he said :

"Want of tenderness is want of parts, and is no less a proof of stupidity than of depravity".

We have no doubt that where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly militates against the equality mandate-viewed in the perspective of social justice.

45. Of course, we should not exaggerate this factor. Post-graduate studies are not all that great and demanding as to invite only geniuses. We cannot be scared by glorifying merit nor be hypnotised by the cult of talent, seeing as we do, crowds of M.Ds, M.Ss and their foreign analogues. Nor, indeed, are the entrance tests any but the feeblest yardsticks to measure innate capabilities. Is it not the wildest hostage to fortune to swear by marks alone which are so freakish and determined by a chancy variety of variables ? We find different modes of examining faculties in different universities, commissions and countries and may, on closer scrutiny, pick holes in the scientific basis of our entrance tests themselves. We repeat all this only to stress the limitations on the current system of selection so that we may not be swept off our feet by the elitist feeling

that something sacred or scientific is being jettisoned for the sake of accommodating nitwits of backward regions institutions or classes when marks are slightly slurred over. Even so, being realists, we go by existing methodology until better modes are devised.

47. There is another pathological condition affecting "medical admissions" which is at the back of the desperate "satyagraha" of the students and this factor tilts the scale a great deal. Counsel for the University, supported by fragmentary material pointing to a pan-Indian tendency, argued that all the country round every university bangs, bars and bolts the doors of medical admission to outsiders and if Delhi alone were to keep its doors hospitably ajar where are the Delhi graduates to go for higher studies if squeezed out by All-India competition ? If reservation is evil, the embargo everywhere must be lifted, lest evil should beget evil. So long as other universities are out of bounds for Delhi graduates, exposure to all-India competition becomes intense and prejudices their chances. This indirect, real yet heavy handicap creates an under current of discrimination and cannot be wished away and needs to be antidoted by some percentage of reservation or other legitimate device.

49. We recognise that institution-wise reservation is constitutionally circumscribed and may become ultra vires if recklessly resorted to. But even such rules until revised by competent authority or struck down judicially, will rule the roost. That is why we have to concede that until the signpost of "no admission for outsiders" is removed from other universities and some fair percentage of seats in other universities is left for open competition the Delhi students cannot be made martyrs of the Constitution.

60. Pathak, J.- (concurring) - But the question really is : Is the degree of reservation excessive ? Is 70% too much ? Too excessive a reservation could result in preference to graduate candidates of severely limited aptitude and competence over meritorious candidates from other institutions whose exclusion could result in aborting a part of our national talent. The determining factor, it appears to me, is the measure of reciprocity prevailing between the different educational institutions in India regarding the availability of admission to graduates of other institutions. It can hardly be supposed that if the medical graduates of the Delhi University are shut out from adequate consideration for admission to the post-graduate courses of other institutions merely because they did not graduate from those institutions they should not think it unjust that the hospitality of their own University to outside medical graduates leaves insufficient provision for them. Not to be able to take post-graduate studies at all implies the termination of their medical studies. This is a problem which can be tackled only on a national level, with all Universities and other medical institutions coming together around a common table with the object of fashioning out a mutual reasonable quota reservation. A wise and far-sighted exercise, eschewing narrow parochial considerations, is called for. It is only by a joining of hands across the entire nation that a suitable and enduring solution can be evolved and the

turbulence which disturbs the student body set at rest." (underlined by us)

58. In the case of Dr. Dinesh Kumar (supra) and Dr. Jagdish Saran (supra), the Supreme Court has affirmed reservation on the ground of absence of reciprocity of reservation by other States and while doing so, has clearly held that in the absence of reciprocal dereservation of seats by other States or Universities, the concerned State or University cannot be forced or asked to throw open its seats or dereserve the same for granting admission to those who are themselves denying admission to others by resorting to reservation as that would amount to denial of equality of opportunity.

59. In the light of the aforesaid decisions of the Supreme Court, we are of the considered opinion that the impugned Regulation No.6 which has done away with the requirement of domicile/permanent residence in respect of general category candidates in Private Medical Colleges in M.P., apparently and in practise, results in denial of equality of opportunity to students of M.P. and is, therefore, violative of Article 14 of the Constitution of India.

60. The aforesaid decision of the Supreme Court in the case of Dr. Jagdish Saran (supra) as well as the decisions in the cases of Indian Medical Association v. Union of India, 2011 (7) SCC 179, D. N. Chanchala v. State of Mysore, (1971) 2 SCC 293, N. Vasundra v. State of Mysore, (1971) 2 SCC 22, and Saurabh Chaudri and others v. Union of India, (2003) 11 SCC 146, have been profitably referred to and relied upon by the Bombay High Court in the case of Mahatma Gandhi Vidyamandir and another v. State of Maharashtra and others, (W.P. No.10158/2016) pending before it for the purposes of rejecting the prayer for interim relief made by the petitioners who have challenged the provision of reservation based on domicile/permanent residence of the State of Maharashtra in the rules for MBBS and BDS admission prevailing in the State of Maharashtra.

61. On the basis of the aforesaid discussion, we are of the considered opinion that in the absence of reciprocity regarding throwing open of seats and freeing them from reservation on the part of the other States, the impugned Regulation-6 of the Regulations of 2016, amounts to denial of equality of opportunity to the petitioners and is, therefore, violative of the equality principles enshrined under Article 14 of the Constitution of India. We are also of the considered opinion that in view of the undisputed local needs and the readily available students of M.P. the State has failed to plead and establish the rationale, object or purpose for doing away with reservations in Private Medical Colleges or any nexus between the aforesaid object and the impugned regulation and, therefore, the classification between persons like the petitioners and others being irrational and not being based on intelligible differentia is contrary to Article 14 of the Constitution of India. It is also held that as the students like the petitioners are the only ones who are subjected to this discrimination on account of being residents of M.P. by the impugned regulation it is in violation of Article 14 as well as Article 15 of the Constitution of India. As the impugned Regulation-6 of the Regulations of 2016, in its applicability to the petitioners,

results in discrimination which is violative of the provision of Articles 14 & 15 of the Constitution of India and, therefore, the impugned Regulation-6 of the Regulations of 2016 is, accordingly, declared unconstitutional as far as it excludes the applicability of the requirement of domicile/ permanent residence for the purposes of granting admission to general category MBBS and BDS seats in Private Medical and Dental Colleges in the State of Madhya Pradesh.

62. We accordingly declare Regulation-6 of the Regulations of 2016 as far as its applicability is restricted only to reserved category students as ultra vires and unconstitutional as it violates the equality clause contained under Articles 14 & 15 of the Constitution of India. The respondents are accordingly directed to apply the requirement of domicile/permanent residence as provided in the Rules to all students seeking admission under the General category seats in MBBS and BDS courses in Private Medical Colleges also without making any distinction or discrimination in that regard.

63. It is further ordered that in terms of the directions issued by the Supreme Court, the State authorities shall proceed to immediately undertake the process of counselling and admission in accordance with the decision of this Court and complete the same before the cut-off date i.e. 30.9.2016.

64. It is, however, observed that in case of any difficulty, the State would be at liberty to make a mention in that regard before this Court.

Epilogue:-

65. This petition was heard extensively after giving due opportunity to the petitioners as well as the State to place all pleadings and documents on record. Extensive hearing was granted by this Court to all concerned and thereafter the order was dictated by this Court.

66. Looking to the urgency in the matter and the fact that typing of this judgment would take time, this Court had pronounced its conclusion with appropriate directions to the State in the Court itself on the date of hearing and certified copies of the orders passed by this Court were also issued to the State and others. However, while the detailed judgment was being typed, on the next day the learned Deputy Advocate General for the respondent/State appeared and informed this Court, for the first time, that a Division Bench of this Court at Indore had heard and dismissed *Vidhi Newalkar v. State of M.P.*, W.P.No.5942/2016 on 31.08.2016, wherein the impugned Regulation 6 of the Regulations of 2016 had been challenged. It was stated that the fact that the impugned Regulation 6 of the Regulation of 2016 has been upheld by the Division Bench of this Court could not be brought to the notice of this Court on account of lack of information and knowledge and, therefore, the aforesaid order of the Division Bench was neither mentioned in the return nor could it be placed before this Court at the time of hearing and pronouncing the judgment.

67. The reason for the same that is stated by the learned Deputy Advocate

General before us is that the petition was heard and decided by the Division Bench at Indore at motion stage itself without issuing any notice to the respondent/State and, therefore, information regarding dismissal of the petition was not available with the State Authorities.

68. As stated by us in the preceding paragraphs, the Division Bench decision of the Indore Bench upholding Regulations-6 of the Regulations of 2016, was placed before this Court after the judgment in these petitions had already been pronounced and while the detailed reasons for the same were under typing. Admittedly, no application for review or re-consideration has been filed either before this Court or the Bench at Indore and, therefore, once having pronounced the judgment, we were not required to do anything more. However, once the decision of the Indore Bench, which is also a Division Bench decision, is brought to our notice, propriety demands that we should take the same into consideration.

69. We are constrained to say so in view of the Full Bench decision of this Court in the case of Jabalpur Bus Operators Association (*supra*) which has laid down the law that where there are two conflicting decisions of the Division Bench, three courses are open to the later Bench. First is either to agree with the previous decision; second, to disagree and refer it to a Larger Bench for decision; and the third, to explain the previous decision which is placed before the subsequent Division Bench. 70. In the particular facts and circumstances of the case stated above we choose to adopt the third course.

71. From a perusal of the order passed by the Division Bench of this Court in W.P.No.5942/2016, it is apparent that the petition was decided at motion stage without issuing any notice to the respondents or giving the respondents any opportunity to file a return or justify their stand. Detailed facts that have been placed before this Court in the present petitions were also not placed before the Court. The series of decisions of the Supreme Court in respect of reservation based on domicile/permanent residence were also not brought to the notice of the Court. The decision of the Supreme Court rendered in the case of Dr. Dinesh Kumar (*supra*) and Dr. Jagdish Saran (*supra*) which clearly deal with similar situations were also not brought to the notice of the Indore Bench.

72. While we are in full and respectful agreement with the general proposition of law propounded by the Division Bench to the effect that Article 14 of the Constitution of India requires doing away with all kinds of regionalism and discrimination between citizens/students on the basis of residence in different States, however, the exception on the basis of which reservation based on residence have been approved by the Supreme Court and have been held to be valid and in conformity with Articles 14 & 15 of the Constitution of India, was neither argued nor considered by the Division Bench at Indore.

73. Apparently, the fact regarding denial of equality of opportunity, absence of reciprocity and several other issues, that have been raised and decided in the

present petitions, were not taken up by the petitioners before the Indore Bench. It is also clear from a perusal of the aforesaid decision that the petition has been dismissed by stating that every child who is born in India has a right to study in M.P. and the growing tendency in the society of regionalism, is a threat to democracy and that no preferential treatment based on domicile/permanent residence for general category candidates can be granted or is desirable or permissible in law.

74. Apparently, the decision of the Supreme Court rendered in the case of Dr. Jagdish Saran and others v. Union of India, (1980) 2 SCC 768, AIR 1955 SC 334 D.P. Joshi v. State of Madhya Bharat, Dr. D. N. Chanchala v. The State of Mysore and Others, 1971 (2) SCC 293, Kumari N. Vsundara v. State of Mysore and Another, 1971 (2) SCC 22 and Dr. Pradeep Jain and others v. Union of India and others, (1984) 3 SCC 654, Dr. Dinesh Kumar and others v. Motilal Nehru Medical College, Allahabad and others, (1986) 3 SCC 727, Ahmedabad Municipal Corporation and Another v. Nilaybhai R. Thakore and Another, (1999) 8 SCC 139, Anant Madaan v. State of Haryana and others, (1995) 2 SCC 135 and Indian Medical Association v. Union of India, 2011 (7) SCC 179, wherein reservation based on domicile/permanent residence has been upheld and has been found to be in consonance with the equality clause contained in Articles 14 & 15 of the Constitution of India were not placed before that Bench and, therefore, were not considered by the Indore Bench in W.P.No.5942/2016 which was decided in the motion stage without issuing notice to the respondents and, therefore, in view of the series of decisions that have been considered and relied upon by us in the present petitions, we are of the humble and considered view that the decision of the Indore Bench in the aforesaid case is clearly distinguishable.

75. More so, as we have clearly explained the fact that the Division Bench at Indore arrived at the conclusion in the absence of proper assistance by the counsel appearing in that case who failed to bring to the notice of the Court the series of decisions of the Supreme Court upholding reservation based on domicile/permanent residence and the specific and clear decision of the Supreme Court rendered in the case of Dr. Dinesh Kumar (supra), wherein under similar circumstances, outside students of the State of Andhra Pradesh and J&K were excluded from participating or seeking admission in All India seats on account of lack of reciprocity on their part as well as the decision in the case of Dr. Jagdish Saran (supra).

76. In view of the aforesaid facts and circumstances and the fact that we have already delivered our judgment and the decision of the Division Bench has been placed before us, for the first time, after we had delivered our judgment and it was not brought to the notice of this Court during argument or in the return filed by the State nor has any application for review been filed by the State, we do not think that we require to change the view taken by us in the present petition.