
(2003) 10 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 4032 of 2003

Sangram Singh Suryawanshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(4)

Citation : (2004) 4 MhLj 940

Hon'ble Judges : B.H. Marlapalle, J;A.S. Bagga, J

Bench : Division Bench

Advocate : B.L. Sagar, holding for P.R. Patil, for the Appellant; V.D. Sapkal, Asstt. Government Pleader for respondent No. 1 and 2, for the Respondent

Judgement

B.H. Marlapalle, J.—In the case of State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, , the Supreme Court held that the reservation in favour of candidates from rural areas is unconstitutional and the reservations for the hilly and Uttarakhand areas are severable and valid, as such, reservations for the hill and Uttarakhand areas are reservations within the meaning of Article 15(4) of the Constitution implying thereby that reservations in favour of socially and economically backward classes of citizens. This view was also subsequently referred to approvingly in the case of Indra Sawhney and Ors. v. Union of India and Ors. 1992 Supp (3) SCC 217 and also in the case of Anil Kumar Gupta and Others Vs. State of U.P. and Others, Surprisingly, the Government of Maharashtra slept over the issue of providing for reservations for hilly area residents for admission to professional courses like Health Sciences, Engineering and law etc. in the Government run or Government Aided Private Colleges though such a reservation has been provided in D.Ed, admission. After about three decades, it issued a Resolution on 31st January, 2002 providing for 20 per cent seats for the hilly region of the Western Ghats of 62 talukas and scarcity area residents, in respect of the admissions to be given in the newly started Government Medical College at Kolhapur for the academic year 2002-2003. In the current academic year, this 20 per cent reservation for the hilly area and scarcity affected area

(HASA) at 20 per cent has been provided in the newly started three Government Medical Colleges i.e. (1) Government Medical College at Latur, (2) Government Medical College at Kolhapur and (3) Government Medical College at Akola. These three medical colleges are in different region i.e. Government Medical College at Latur is in the Marathwada region, the Government Medical College at Akola is in the Vidarbha region and the Government Medical College at Kolhapur is for the rest of Maharashtra area. It is also pertinent to note at this stage that in the State of Maharashtra there are 6 Government Engineering Colleges and 4 Government Aided Private Engineering Colleges and even in the current academic year no reservations have been provided for the hilly area or scarcity area affected residents for admissions to the four year degree courses in Engineering/Technology. Thus the State Government has done a half hearted exercise of providing reserved seats for HASA, that too, restricted only in the three newly started Government Medical Colleges.

2. This petition, filed under Article 226 of the Constitution, has challenged the validity of the Government decision to reserve 20 per cent seats for hilly area and scarcity affected area (HASA) only in the abovenamed three Government Medical Colleges though the the Government of Maharashtra runs other 11 Government Medical Colleges and there are 4 medical colleges run by the Municipal Corporations of Mumbai and Thane and fully aided by the State Government. These reservations are set out in Rule 5.5.5 to 5.5.7 and the distribution of seats at these three Government Medical Colleges is set out in Rule 5.8 to 5.10 and thus" the constitutional validity of these rules is questioned by the petitioners. The said rules read as under:

3. The petitioner himself is a resident of hilly area in Jalgaon district and belongs to Vimukta Jati category. In the MH-CET 2003, he has scored 150 out of 200 marks and in the State Merit List, he is at Serial No. 9852. He contends that one Miss Smita Dilip Naik, a resident of hilly area and belonging to Vimukta Jati categories, was at SI. No. 10668 in the State Merit List and another candidate Shri Arvind Charankumar Chavan, a resident of hilly area and belonging to Vimukta Jati category, was at SI. No. 10516, have been admitted by giving the benefit of reservation available to the hilly area (HA) though they had scored less marks than him in the MH-CET"2003 and in the State Merit List were below him. If the area restriction as imposed in the impugned rules was not operated, the petitioner being higher in merit ought to have been admitted to the 1st Year of M.B.B.S. course in any of the Government. Medical Colleges or in any of the three abovesaid Government Medical Colleges in the HA category. Thus, the area restriction imposed by the impugned rules for the hilly area residents have adversely affected him and the protection of equality guaranteed under Article 14 has been violated. It is also submitted that the guarantee of Article 15(1) has been breached by imposing such area restrictions, and these restrictions are contrary to the law laid down by the Apex Court in the case of Nidamarti Maheshkumar Vs. State of Maharashtra and Others, as well as Anil Kumar Gupta (supra), though the reservations in favour of hilly area residents are the

reservations recognized under Article 139(9) of the Constitution. The challenge to the impugned rules is two-folds namely;

(a) There cannot be a management quota in the Government Medical Colleges and such a concept is unknown to law. In any case, admission to any seat in such medical colleges must be from the list of MH-CET and the State Government has acted in breach of the settled law in this regard,

(b) while reservations for the hilly area (HA) residents are permissible if restricted to about 3 % overall, the reservation in favour of the scarcity area (SA) residents are illegal and void ab initio,

(c) while providing for such reservations in favour of hilly area residents, the choice of the students cannot be restricted to only three colleges when there are in all 14 Government Medical Colleges and 4 Government assisted Municipal Corporations" Medical Collages,

(d) the reservations so provided for the HA category ought to allow the students of this category to compete in the 30 % State level and 70 % regional level quota on merits on par with opportunities available to the OC, SC, ST and OBC, etc. category students and

(e) provided reservation to the extent of 20 per cent in each of these three Government medical colleges in favour of the hilly area and scarcity affected area residents are excessive and glaring illegal and which was disapproved in the case of Anilkumar Gupta (supra).

4. It is submitted by the petitioner that the residents of hilly area in whose favour some percentage of reservation has been carved out must be provided with an opportunity to compete in the State quota as well as the Regional quota on par with the students from Open Category (O.C.), Scheduled Castes (SC), Scheduled Tribes (S.T.), Vimukta Jatis (V.J.), Nomadic Tribes (N.T.) and Other Backward Classes (O.B.C.). The hilly area residents cannot be forced to seek admissions in a particular college and that too a newly started college. Such area restrictions and compulsion to seek admission in a particular medical college violates the guarantee enshrined under Articles 14 and 15(1) of the Constitution. While specifying 20 per cent reservation for HASA, no separate bifurcation quantifying percentage or number of seats for hilly area residents and scarcity affected area residents has been carved out. In addition, while providing reservations for hilly area residents, which is a special reservation as recognized in a catena of decisions by the Apex Court, the State Government was required to quantify the number of seats in each Government run and Corporation run medical colleges all over the State of Maharashtra and failure to do so is in breach of the spirit of the decision in the case" of Anil Kumar Gupta (supra). The students seeking the benefit of reservation of S.C. S.T. and O.B.C., etc. which are the reservations recognised under Article 15(4) have the scope to compete in the State quota (30 per cent) as well as the regional quota (70 per cent), whereas the hilly area residents have been denied this choice and they have been forced

to seek admissions in any of these three Government medical colleges depending on their place of resident and by creating a cluster of reservation. This is one more facet of discrimination adopted by the State Government and, therefore, on all these counts, the impugned rules must be held to be unconstitutional, urged Shri Sagar, the learned Counsel for the petitioner.

5. Affidavit-in-reply has been filed on behalf of respondents No. 1 and 2 in support of the impugned rules validity and unconstitutionality. Shri Sapkal, the learned Addl. Govt. Pleader referred to the decision in the case of *The State of Maharashtra Vs. Indian Medical Association and Others*, and submitted that the decision of the State Government to provide for 20 per cent reservation for HASA was incorporated in the Government Resolution dated 30th August, 2000 by which the Government Medical College at Kolhapur came to be established and by allowing the State Government's appeal against the decision of this Court in Writ Petition No. 3798 of 2000 *Indian Medical Association, Nandurbar Branch and Others Vs. State of Maharashtra and Others*, impliedly such reservation has been approved. He has also relied upon the decisions in the case of *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , *Kailash Chand Sharma Vs. State of Rajasthan and Others*, The following observations in the case of *Nidamarti Maheshkumar (supra)* and *Kailash Chand Sharma (supra)* have been cited by him in the same order.

"But we would like to make it clear that it would not be unconstitutional for the State Government to provide for reservation or preference in respect of a certain percentage of seats in the 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 State Government is on the higher side, it would not fall foul of the constitutional mandate of equality....."

"However, the learned Judges took the view that the hill and Uttarakhand areas in U.P. State are "instances" of socially and educationally backward classes of citizens and that those living in the hill and Uttarakhand areas, can be considered to be socially and educationally backward classes of citizens. The social, economic and educational factors justifying such conclusion were set out succinctly by the learned Judges. Ultimately the reservation in favour of candidates from rural areas was declared unconstitutional while upholding reservation for the candidates from hill and Uttarakhand areas....."

6. Rule 5 of the admission rules deals with distribution of seats after excluding the 15 per cent Central Government quota and the seats reserved for candidates from troubled States and the States in which Health Science Courses are not available, the balance seats are allotted by the competent authority with the break up of 30 per cent State merit list quota and 70 per cent Regional merit quota for the respective regions namely; Rest of Maharashtra. Vidarbha and Marathwada. The constitutional reservations and specified (special reservations) would be available from this 30 per cent and 70 per cent quota. Rule 5.5 deals with distribution of constitutional and specified reservation seats and it states

that the candidates desirous of claiming constitutional and/or specified reservations must have claimed the same in the original application form of MH-CET 2003, failing which, the claim will not be entertained subsequently. The constitutional reservations and specified reservations are as under :

Rule 5.6 provides for reservation for female candidates to the extent of 30 per cent seats at the disposal of the competent authority in all courses and they will be for all the categories like O.C., SC, S.T., V.J.N.T., O.B.C., Defence, etc. The percentage of constitutional reservations are as under :

Rules 5.8 to 5.10 provide for the distribution of seats at the Government Medical College at Kolhapur, Latur and Akola respectively, and in each of these colleges, the distribution is as under :

7. The challenge in this petition mainly pertains to the provision of management quota and the HASA quota (the management quota 15 per cent and HASA quota 20 per cent). Though there is no separate quota earmarked out under the HASA head for hilly area and scarcity affected area, it is clear from these rules that for hilly area residents, there is region wise restriction inasmuch as the hilly area residents of Marathwada are required to be admitted in the college at Latur, the hilly area residents of Vidarbha are required to be admitted in the Government Medical College at Akola and the hilly area residents of rest of Maharashtra are required to be admitted in the Government Medical College at Kolhapur. Whereas for the scarcity affected area seats, there is no such regional restriction and a candidate belonging to any part of Maharashtra can compete for admission in any of these three colleges. Such a benefit/choice is not available to the hilly area residents though the quota of 20 per cent is common for HA and SA. This provision itself is absurd, to say the least, and on this ground alone, the provisions of Rule 5.8.2, 5.9.2 and 5.9.3 are required to be set aside.

By the time, this petition came up before us, the admission process in these three Government Medical Colleges was in progress and was almost towards the last leg, whereas the admission process in other Government and Government Aided Medical Colleges was almost over for the M.B.B.S. course. While granting Rule, we had directed status quo in respect of the further admissions and also clarified that the admissions already granted in these three colleges shall be subject to the final outcome in this petition.

8. During the course of final hearing, we called upon the respondents No. 1 and 2 to furnish the list of all the candidates admitted under the HASA quota of 20 per cent in all these three colleges and the following tabular form would show the inherent absurdities in considering the HA and SA quota.

No explanation could come forward as to why out of 20 seats filled in under the Rajashree Chhatrapati Shahu Maharaj Govt. Medical College at Kolhapur, 19 have been filled in for the HA category and only one seat has been filled in from SA category. On the other hand, in the Government Medical College at Akola, there are only 7 seats in the HA category and, at the same time, 12 seats in the SA

category. Similarly, in Government Medical College at Latur there are 12 seats in HA and only 8 seats in SA category. Not only this, but out of the 21 total seats under SA category, 19 are from the rest of the Maharashtra Region and one each from the Vidarbha and Marathwada region, though it is well known and the statistics maintained by the State Government is sufficient proof that the Marathwada and Vidarbha regions are more scarcity prone than the rest of Maharashtra region. In fact, it is for the first time that some districts in the rest of Maharashtra region are facing the scarcity only this year and in the past, there could have been some isolated talukas from the rest of Maharashtra region which were identified as scarcity affected areas. A number of talukas and even some districts are known to be scarcity affected in Marathwada as well as Vidarbha regions for number of years. We have also noted from the details provided in respect of these 59 seats that in the SA category, the certificates submitted and accepted were not in keeping with clause (2) of Annexure F. Clause (2) (i) states that to avail HASA claim, a domicile certificate in the name of parent stating that his village/town has been declared as scarcity area for the last two consecutive years is necessary and the said certificate should be obtained from the concerned Revenue and Forest Department official. We have observed that most of the certificates submitted and accepted did not mention that the area concerned was declared as scarcity affected area during the last two consecutive years and they only stated that scarcity like situation was prevailing. Similarly, in the HA category, some of the admitted candidates who are born and brought up in places like Mumbai, Pune, Aurangabad and other urban areas have claimed themselves to be the residents of hilly areas on the basis of the certificates which have been accepted. We need not advert any further on this issue when the learned Addl. Govt. Pleader was candid enough to state, on instructions, before us that all these certificates shall be duly investigated by following the appropriate parameters so as to establish genuine claim of HA or SA within a fixed period (may be about 4 weeks) and those found to be bogus or unreliable, the admissions shall stand cancelled. Before we proceed to touch upon the legal challenge to the validity of the aforesaid rules, it is pertinent to note that the HASA quota is provided for the M.B.B.S. admissions and not for any other Health Courses like Dental (B.D.S.), Ayurvedic (BAMS), Homeopathic (BHMS), Unani (BUMS), etc., though the admission rules are common for all these courses and the Government as expected kept mum on this issue. No reasons are coming from the Government as to why it thought it fit to provide HASA reservations only for the 1st year of M.B.B.S. course and such reservation was not provided for the other health sciences.

9. Now coming to the validity of the impugned rules providing for management quota and HASA quota, the affidavit-in-reply has unequivocally stated that the management quota admissions have not been granted and the Government shall not implement or administer this quota and the seats earmarked for the management quota shall be made available to the competent authority for allotment as per rules 5.4 and 5.4.5.

The affidavit also states that the admissions granted under the HASA quota of 20 per cent in each of these three colleges have been administered as horizontal reservations and they have been adjusted against the respective vertical reservations in O.C., SC, S.T., V.J., N.T. and O.B.C., etc. The statement of admissions granted in these three colleges indicates that the HASA quota seats have been shown as horizontal reservations and adjusted against the vertical reservations in the respective categories.

We are, therefore, required to consider only the challenge to the validity of providing 20 per cent seats for HASA in all these three Government Medical Colleges and the issue of area restrictions as imposed on the HA residents.

10. In the case of *State of Uttar Pradesh and Ors. v. Pradip Tandon and Ors.* (supra) for admission to 7 medical colleges in Uttar Pradesh under the Meerut University, 117 seats were reserved for rural areas, 25 seats for hill areas and 25 seats for Uttarakhand areas as against the total of 782 seats in these colleges. Thus, the hilly area and Uttarakhand area reservation was about three per cent. Similarly, in the 5 medical colleges at Allahabad, Kanpur, Meerut, Agra and Jhansi, out of the total of 758 seats, 26 seats were reserved for the nominees of Government of India and from the remaining 732 seats available, for being filled in by the combined pre-medical test, 89 seats were reserved for rural areas, 23 seats for hilly areas and 23 seats for Uttarakhand division. The Supreme Court held that the reservations in favour of candidates from rural areas was unconstitutional for the following reasons :

- a) There is no classification based on residence between students coming from within the State and others coming from without, and
- b) The case of classification of rural areas was not one of under classification and in fact, it was a case of discrimination in favour of the majority of rural population to the prejudice of students drawn from the general category.

In para 29 of the said decision, the Supreme Court stated thus : The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. 80 per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15.

11. If we examine the reservation provided in the instant case for the scarcity

affected areas on the touchstone of the law laid down in the case of Pradip Tandon (supra), the unescapable conclusion would be that such a reservation also offends Article 15(1) of the Constitution. The scarcity affected areas could be a part or major or entire portion of a taluka, a district or even a region. As noted hereinabove, in the case of the Marathwada and Vidarbha regions, most of the areas have been scarcity prone areas and, therefore, majority of the population from these regions would be scarcity affected. Similarly, the scarcity could be prevalent for a particular season/year or it may be interruptedly or in some case continuously or consecutively. If a particular taluka or district has been scarcity affected in one particular year may not be so in the next year. Being a resident of such area cannot be called a social or educational handicap. The reasoning set out by the Apex Court invalidating the rural area reservations is application to the SA reservations in the instant case with equal force. The disability of being a resident of a scarcity area is not permanent and it may be for a year or few years and, therefore, such a disability would not fall within the ambit of Article 15(4), and in any case, poverty even suffered for few years cannot be the basis for special reservations as has been observed in Pradip Tandon's case (supra). The reservation for scarcity affected areas as provided for in the impugned rules will have to be, therefore, held as unconstitutional.

12. Now coming to the hilly area reservations, there, can be no doubt that such reservations can be provided and they will fall within the ambit of Article 15(4) which means that persons covered by such reservations would fall in the socially and educationally backward class of citizens. In Anil Kumar Gupta's case (supra) or in Pradip Tandon's case (supra), such reservations were to the extent of 3 per cent and other 3 per cent were for the Uttarakhand area. The Supreme Court in Anil Kumar Gupta's case held that even 9 per cent reservation in a special category would be unreasonable and it would not receive the sanctity of law. A modest 3 per cent reservation for hilly area residents has a sanctity of law provided it is treated to be a horizontal reservation either compartmental or overall. It was also held that in the interest of avoiding any complications and intractable problems, it would be better that the horizontal reservations are compartmentalised and the notification inviting applications should itself state not only the percentage of horizontal reservations but also specify the number of seats reserved for them in each of the social reservation categories i.e. SC, S.T., O.B.C. and O.C. and if this is not done, there is always a possibility of one or the other vertical reservation category suffering prejudice. Regarding the procedure to be followed for administering such reservations, Supreme Court stated in para 18 thus :

The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/

accommodated against their respective social reservation categories, overall, by deleting number of candidates therefrom, if it is, however, compartmentalised horizontal reservation then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations.

13. In the Government Medical Colleges and the Government Aided Medical Colleges, the total intake capacity for the 1st Year of M.B.B.S. course is about 2000 all over the State of Maharashtra. Fifteen per cent of these seats i.e. 300 would be left for the Central Government quota, 40 seats are for the students coming from the States of Jammu and Kashmir. In this fashion, the seats available with the competent authority would roughly come to about 1650 and from the same, the said authority has to allot 30 per cent State quota and 70 per cent regional quota in all the categories i.e. social reservations as well as special reservations. If the hilly area reservation of 3 per cent is provided for as has been accepted in Pradip Tandon's case or in Anil Kumar Gupta's case (supra), the total number of seats for the entire State would come to about 60. Even the impugned HASA quota in the three Government Medical Colleges, as noted above, was erroneously calculated as 60 without deducting the Central Government quota, etc. If the impugned quota of 20 per cent was correctly calculated the total number of seats would be around 50 only and not 59 or 60 as has been presumed in the instant case. Thus, the number of reservations contemplated in these three Government Medical Colleges could be reasonably distributed all over the State of Maharashtra in different Government or Government aided medical colleges rather than forcing the hilly area residents to go to a particular college by taking away their choice to compete in any Government Medical College in the State on par with the students belonging to the SC, ST or OBC categories.

14. In the case of Nidamarti Maheshkumar (supra), it was inter alia observed thus :

"But even if the regions, within the jurisdiction of the universities in Vidarbha and Marathwada can be said to be backward and regions within the jurisdiction of the universities in Bombay and Pune can be said to be advance, we do not think that region wise classification for admission to medical colleges can be sustained. There is no reason why a brilliant student from a region which is within the jurisdiction of a university in Vidarbha or Marathwada area should be denied the opportunity of medical education in Bombay or Pune. Why should he remain confined to the so called backward region from which he comes? Should an equal opportunity for medical education not be made available to him as is available to students from regions within the jurisdiction of Bombay and Pune Universities? Why should mobility for educational advancement be impeded by geographical limitations within the State? Would this clearly not be a denial of equal opportunity violative of Article 14 of the Constitution? The answer must clearly be in the affirmative. It would plainly be violative of the mandate of the equality

clause to compartmentalize the State into different regions and provide that a student from one region should not be allowed to migrate to another region for medical education and thus be denied equal opportunity with others in the State for medical education."

Rule B(2) of the Rules for Admission to the M.B.B.S. course for the academic year 1985-86 stated that students who had passed H.S.C examination of the Maharashtra State Board of Secondary and Higher Secondary Education from schools/colleges situated within the jurisdiction of one university were not eligible for admission to medical college or colleges situated in the jurisdiction of another university. This rule was held to be invalid and unconstitutional. The same analogy has to be made applicable to the students of all categories and indeed, it has been made applicable to OC, SC, ST and OBC, etc. by providing 30 per cent seats in the State level quota and 70 per cent seats in the regional quota. When such a mobility of competing for a seat in reserved categories anywhere in the State of Maharashtra is available to a SC, ST or OBC candidates, there is inherent absurdity in denying such a choice to a hilly area resident who also has been held to fall within the ambit of Article 15(4) of the Constitution. Article 15(1) of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them is the mandate of Article 15(1) and the provisions of Article 15(4) cannot be an exception to this guarantee under clause (1). A brilliant student in the hilly area of Kinwat in Nanded district of Marathwada region must have an opportunity to compete for M.B.B.S. seat in any Government Medical College at Mumbai, Pune, Nagpur or Aurangabad and he cannot be told that he has no choice beyond the Government Medical College at Latur. A hilly area resident who suffers from social and educational disabilities as has been recognised by the catena of decisions, by such rule of forcing him to be opting for a particular college, that too, recently started, would perpetuate his backwardness as compared to other students even while pursuing his medical studies. A newly started college generally suffers from certain disadvantages in terms of faculty and other infrastructure as compared to a well established Government Medical College. Thus, the guarantee of equality enshrined under Article 14 is offended by such a restriction. If such a brilliant student does not have the financial resources to seek admission in medical college beyond his region, by competing in the 30 per cent State level quota, he has an additional option of competing in the 70 per cent regional quota. This benefit has also been denied to the hilly area resident in the instant case. For example, in the Marathwada region, there are four Government Medical Colleges and in the Vidarbha region, there are equal numbers. The hilly area residents from these regions have been told that they do not have the scope or right to compete for admissions in any of these four colleges and they have been forced to go to the only college in the said region, which has been opened this year. There cannot be a better example of violating the principle of equality before law and equal opportunities in seeking admissions

to professional courses.

The disability of being a hilly area resident comes by birth, inasmuch as a disability like belonging to SC, ST or OBC and, therefore, the reservations for such residents are fitted in Article 15(4) on par with the reservations available for SC, ST and OBC, etc. Though the reservation for hilly area resident is recognized as a special reservation, while administering the same, the process followed in providing opportunities to compete must be on par with the opportunities provided to the different social categories like OC, SC, ST and OBC. By the impugned rules, the opportunities to compete in the 30 percent State level quota and 70 per cent Regional quota have been denied and this action of the State Government is certainly unconstitutional.

15. The decision in Chanchala's case (supra) was the origin of State level and Regional level quota. At the relevant time, the State of Mysore and three universities and the medical colleges admissions under these three universities were administered as per the rules framed by the State Government. The rules so framed had provided for 80 per cent of the seats in the Government medical colleges under each of these three universities to be offered to the students coming from the colleges under a particular university and the remaining 20 per cent seats were to be offered to the students coming from the colleges under the remaining two universities. It was held that such a concept of Regional and State level reservations was permissible and it was not unconstitutional. In Pradip Tandon's case (supra), this concept was approvingly reiterated and elaborated, whereas in Nidamarti's case (supra) the respective quota was quantified to 30 and 70 per cent and undoubtedly to be administered solely on merit basis and to all categories like O.C., S.C., S.T. and O.B.C. etc. When the issue regarding the area restrictions in Nidamarti Maheshkumar's case was raised and decided by the Apex Court, the law laid down in Chanchala's case was quoted and it was further observed that the said decision could not be relied upon in support of area restrictions. A brilliant student coming from any part of the State and from any social/special group must be provided with an opportunity to compete, though in a limited quota, for a seat in any college throughout the State and this doctrine must be applicable even to the reservations which are coming within the ambit of Article 15(4) and it has been so held consistently. The hilly area cannot be an exception to this doctrine once it has been repeatedly held that they are the reservations recognized under Article 15(4) of the Constitution. The Government's reliance on the decision in Chanchala's case in support of its decision to have 20 % reservation for HASA in these three medical colleges is ill-founded and grossly misplaced. In his address before us, the learned Addl. Govt. Pleader submitted that the reservation for HA category being a concession to a particular social group, the Government would be justified in enforcing the students from this group to seek admissions in a particular college in the concerned region and when a concession is being given, the beneficiaries of such concessions cannot have the choice. This argument is on the feudal line of thinking namely; "beggars have no choice". The decision to provide for

reservations which are recognized to be falling within the ambit of Article 15(4) of the Constitution is not a bounty of the State Government and every student falling in any of these categories has been held to be entitled to compete for admissions at State level or regional level. In the Marathwada region, there are four Government medical colleges and in the Vidarbha region, the position is the same. In addition, the opportunity to compete for admission on merit basis in the State quota, there is no reason why the student from the respective regions cannot be allowed to compete in any of the Government college in each of the regions. Thus, the rule providing for reservations in a particular college for the hilly area residents of the concerned region grossly violates the well recognized doctrine of providing competitive opportunities for admissions to professional courses all over the State and the region.

16. In the case of Indian Medical Association (*supra*), this Court has mainly dealt with the challenge against the decision of the Government to open a Government medical college in breach of to the provisions of the Maharashtra University of Health Sciences Act, 1998 and the perspective plan published by the Health University under the said Act. Though this decision was set out in the Government Resolution dated 30-8-2000 and it also provided for distribution of seats, the challenge was restricted only to the first part namely; the decision to open a new Government medical college at Kolhapur. This would be clear from the issues we had framed for consideration in para one and the conclusions drawn by us in para 22. For ready reference, we deem it appropriate to quote as under :

"To conclude we hold that:

- (a) The decision of the State Government to establish a Government Medical College at Kolhapur is contrary to the provisions of Section 64 of the Act and against the law laid down by this Court in the case of Dhananjay (*supra*),
- (b) the State Government does not have a power to establish a Government Medical College at a location which is not proposed in the perspective plan and permission for such new College to be granted by the State Government ought to be in keeping with the said plan, as per the scheme of Section 64 of the Act,
- (c) The State Government is bound by the perspective plan for considering any proposal to start an institution of higher learning in health sciences irrespective of whether such proposal is submitted by a private management or by the State Government. A proposal for opening a new college and which is not submitted to the University u/s 64(3) is non est and therefore, a new College cannot be established under a proposal therefore is submitted to and considered by the University.
- (d) The impugned decision is unsustainable on all counts and, therefore, deserves to be interfered with by invoking our powers under Article 226 of the Constitution as the said decision has been arrived at without following the procedure as set out u/s 64 of the Act and in disregard to the perspective plan

formulated by the University for the year 2000-2001 as well as 2001-2006.

When our decision in the above case was challenged, the Supreme Court set aside the order and the issues framed by us were answered in the following words :

"To sum up, what we have held hereinbefore are these:

(A) That, the decision of the State Government to establish a Government run medical college at a proposed location tantamounts to an Essentiality Certificate under para 3 of the Regulations to the extent of location of the medical college;

(B) That, the defined meaning of expression "management" cannot be assigned to the expression "management" occurring in Section 64 of the Act;

(C) That, the expression "management" occurring in Section 64 of the Act does not include the State Government.

(D) That, when the State Government resolves to set up a medical college at a proposed location, it is not required to submit any application to itself for permission to establish a Government run medical college through the University u/s 64 of the Act;

(E) That, any perspective plan prepared by the University is not strictly binding on the State Government when it resolves to set up a Government medical college at a proposed location in view of the fact that the State is not the "management" u/s 64 of the Act;

(F) That, the perspective plan prepared by the University binds the State Government qua private management of anybody else excepting the State Government applying for permission of the State Government to open a medical college;

(G) That, any perspective plan prepared by the University serves as a guidelines to the State Government as and when the State Government decides to set up a new Government run medical college within the State and the State Government is expected to abide by the said guidelines, as far as possible;

(H) That, in the present case, there was substantial compliance of the perspective plan prepared by the University; and

(I) That, the decision in the present appeal is confined to the question of establishment of a Government run medical college in the State."

Towards the concluding part in the said decision, the Apex Court took care to clarify that the decision was only on the point of the Government authority to open a new Government medical college. It is also pertinent to note that while the appeal was admitted against our decision, by interlocutory order, the State Government was permitted to go ahead with the admissions in the academic year 2001-2002 as per the planned quota of 100 seats in the Government medical college at Kolhapur but without any special quota called the

management or NRI quota or the hilly area and scarcity affected area quota. We may quote the interlocutory order dated 18-10-2001 as under :

"In the meantime, it will be open to the appellant herein to provisionally interview the students for admission in the MBBS Course in the Government Medical College, Kolhapur and prepare a provisional list of such students who deserve admission. However, such provisional list of admission shall not be communicated either to the students so admitted or to the Medical Council. Learned Solicitor General further states that for the current year, all the seats will be free seats and there shall be no reservation for NRI or any other category other than any constitutional reservation. We have passed this order in continuation of order dated 12-10-2001."

The mere fact that there was a reference to various types of reservations like the management/NRI quota and the HASA quota, cannot be taken support for advancing an argument before us that the final verdict in approving Government decision to start a new medical college at Kolhapur was an approval to the Government Resolution dated 30-8-2000 in its entirety. If that be so, it is not known why the State Government in its affidavit- in-reply before us, candidly accepted that it would not follow the 15% reservations proposed for the management quota in the impugned rules. It appears that the Government, though belatedly, was convinced that the management quota may be administered as the "Mantralaya quota. We have no doubt in our mind that the decision of the Apex Court in the case of Indian Medical Association (supra) cannot be held to be impliedly approving HASA reservations as provided in the impugned rules and that too creating a cluster of reservations to the extent of 20% in particular medical colleges and denying the right to compete at the State as well as regional level for admissions on merit on par with the SC, ST and OBC category students.

17. We have noted from the original file submitted before us that on the interlocutory order having been passed by the Supreme Court in Indian Medical Association's case, the Department of Medical Education and Drugs submitted a detailed note which was placed before the Hon"ble Chief Minister and it was only after his approval that the Government Resolution dated 6-11-2001 was issued so as to complete the medical process at the newly started medical college at Kolhapur by 10-11-2001 and without the NRI as well as the HASA quota as was proposed in the Government Resolution dated 30-8-2000. However, after the appeal was decided by the Apex Court finally in favour of the State Government, a detailed note was prepared by the Medical Education and Drugs Department and the said note along with the decision of the Apex Court was not placed before the Hon"ble Chief Minister. The note so prepared indicates that the Medical Education and Drugs Department, treated the final decision of the Apex Court in Indian Medical Association's case to be approving the Government Resolution dated 30-8-2000 in its entirety which was not so. The said note was approved by the minister concerned without being placed before the Hon"ble

Chief Minister and the Government Resolution dated 31-1-2002 came to be issued again proposing the NRI quota 15% as well as the HASA quota of 20% which was not contemplated in the interlocutory order passed by the Supreme Court and as quoted hereinabove. When the Medical Education and Drugs Department proceeded to frame rules for admission to the Health Sciences Courses for the current academic year, again the decision to follow the concept of reservations in the management quota as well as HASA quota and that too in the three newly started Government medical colleges was not placed before the Hon"ble Chief Minister. The decision was finalised by the minister concerned and, all along, it was tried to be projected that such reservations have been impliedly approved by the Apex Court by its decision in Indian Medical Association's case. We find two major infirmities in the approach followed by the respondent No. 1. In spite of the interlocutory order being clear in its language, the respondent No. 1 thought it fit, and rightly so, to place the papers before the Hon"ble Chief Minister so as to undertake the admission process before 10th November, 2001 in the Government Medical College at Kolhapur. However, after the final decision in the said case was pronounced by the Apex Court, the respondent No. 1 did not follow the same procedure. In future, it is imperative that while amending the rules of admission to any of these professional courses, such amendments as proposed are placed before the Hon"ble Chief Minister along with the opinion of the Law and Judiciary Department as well as the learned Advocate General. This would be, not only, in keeping with the rules of business as have been framed under Article 166 of the Constitution, but indeed in the larger public interest and to avoid litigations so as to ensure that the admission process is finalised as early as possible.

18. Once we have recorded our finding that scarcity affected area restrictions are void ab initio and the hilly area reservations are permissible but the manner in which they have been proposed in the impugned rules has no sanctity in law, we are required to deliberate on the distribution of these 50 seats for the HA quota to be allotted in the 30% State and 70% regional quota in all the Government medical colleges on par with the reservations provided for SC, ST and OBC categories and keeping in mind that those who are admitted in different categories in other colleges than these three colleges should not be disturbed. As noted earlier, further admission process in these three colleges was stayed by us and it was ordered that admissions already granted in these colleges would be subject to the final decision in this petition, vide our order dated 30-9-2003. This order had received adequate publicity in the electronic as well as the print media all over the State. No student has appeared before us apprehending any adverse effect to his/her admission already granted under the HASA category.

Once it has been established by the catena of decisions that the hilly area reservations restricted to about 3% all over the State are permissible, 50 seats for HA category as noted in para 13 of this judgment could be accepted as permissible reservation all over the State of Maharashtra and this would mean that 15 seats would be in 30% State level quota and remaining 35 seats would

be in the 70% regional quota on the basis of merit. As against these 50 seats, 38 have already been filled in as noted in para 9 hereinabove, which number is in excess of 35 seats available for the regional quota, by a meagre of 3 seats. Some of them are likely to be cancelled once the Government undertakes the verification of the certificates submitted and accepted while granting admissions in the last month. The balance of 15 seats in the State level quota could be made up from the vacancies that would be available on invalidating the reservation for the scarcity affected area residents and in the said quota 21 seats have been filled in under these three colleges from amongst the students all over the State as noted in para 9. The students who have already been admitted in the HA quota are required to be called upon to furnish their options for admissions in any of the Government medical colleges in the respective regions and the balance of the seats so as to restrict the total to 50 seats in HA categories can be filled in from the State level quota. The options so given may be implemented during the current academic year itself provided there are students in the respective vertical category in the other Government medical colleges in the concerned region who are desirous of moving to any of these three Government medical colleges. For example, if in the Government Medical College at Aurangabad, Nanded or Ambejogai there is any student in the OC, SC, ST or OBC category wanting to move to the Government Medical College at Latur, such a seat could be offered to student admitted in the Government Medical College at Latur in the HA quota in the respective vertical category, provided he has opted for such a transfer to any of the other three medical colleges in the Marathwada region, and in case such movement is not possible during the current academic year, the competent authority shall implement such transfers, if opted for, in the next academic year in the Government medical college in the concerned region. The seats to be filled in from the State level quota shall also be initially made available at the Government Medical College at Latur and Government Medical College at Akola in this academic year, and in the next academic year, the concerned students shall be transferred in the colleges of their choice all over the State of Maharashtra. However, in the next year onwards, the HA quota are to be administered in the same manner as the admissions for SC, ST and OBC, etc. are carried out in the 30% State quota and 70% regional quota so as to provide for competitive opportunities to this category students in the State merit list as well as regional merit list and the Government medical colleges in the entire State or the entire region. The Government may also take steps for providing such reservations i.e. hilly area residents in other Health Sciences Courses as well and the Engineering/Technology courses. We have restricted the balance seats from the HA category to be filled in at the Government medical college at Latur and Akola only because the Government Medical College at Kolhapur has already admitted 19 students in the said category.

Shri Sapkal, learned Addl. Govt. Pleader, invited our attention to a Full Bench decision of this Court in the case of Nachane Ashiwni Shivram and Others etc. Vs. State of Maharashtra and Another etc., and submitted that following the

same view, the admissions already granted should not be disturbed. We have noted that the said decision is not applicable in the instant case for the reasons that the admission process in the subject three Government medical colleges has not yet been completed for the current academic year and by our order dated 30th September, 2003, while granting status quo on the admission process, the admissions already granted were made subject to the final decision in this petition.

19. In the result, we hold that:

a) providing for a management quota of 15% and reservation for the scarcity affected areas in the Government Medical Colleges is unconstitutional and void ab initio.

b) providing for-reservations for the hilly area residents to the maximum extent of 3% is permissible as these are the reservations falling within the ambit of Article 15(4) of the Constitution;

c) such reservations for HA category are required to be made available in the 30% State quota and 70% regional quota on the basis of merit, on par with the same procedure as is followed for the SC, ST, OBC. etc. and

d) providing for the HA category reservations to the extent of 20% in the newly started three Government medical colleges is illegal and hence impermissible and such reservations offend the protection under Articles 14 and 15(1) of the Constitution and result into discrimination between the reservations which fall under Article 15(4) of the Constitution;

The State Government may fill in 50 seats from HA category in the entire State (i.e. 3% of the total seats for 1st Year M.B.B.S. available to be allotted by the competent authority) and while maintaining the admissions already granted in this category, respondents No. 1 and 2 shall undertake the process of verification of the hilly area resident certificates and the same shall be completed within two weeks from today. The balance seats so as to make the quota of HA category of 50 seats shall be filled in from the 30% State quota subject to a maximum number of 15 seats and they shall be initially admitted in the Government medical college at Latur and Akola. The movement of these students admitted in the HA category to the Government medical college of their choice in the region or State shall be affected, as explained by us in para 18 of this judgment.

As and when the Respondent No. 1 proposes to amend the admission rules in future, we expect that such amendments be placed before the Hon'ble Chief Minister along with the opinion recorded by the Department of Law and Judiciary as well as the learned Advocate General, for his approval. The State may also take steps for providing for HA category reservations in other courses from the Health Sciences from the next year onwards and the reservations so provided shall be all over the State of Maharashtra and distributed in the State as well as regional level quota on par with the procedure followed for the SC, ST and OBC,

etc. categories. The admissions to the 21 seats in the scarcity area category granted in the three Government medical colleges at Kolhapur, Latur and Akola are declared illegal and void ab initio. The vacant seats from this category to the extent of making a total of 50 seats in the HA category shall be made available to the HA category and to be filled in on the lines stated hereinabove and in the Government medical colleges at Latur and Akola only. We also clarify that the 21 students who were admitted in the scarcity affected area category shall be eligible for being considered for admissions as per merit in the other Health Sciences Courses like B.D.S., B.A.M.S., B.H.M.S., B.U.M.S., etc. and their claims shall be considered against the available vacant seats in such courses, as per rules of admission and by treating them to be the candidates waiting in the merit list for such admissions in the current academic year.

The claim of the petitioner and other similarly placed students shall be considered for the HA category admission either in the State or the regional quota seats that are available with the competent authority so as to make a total quota of 50 seats in this category for the current academic year and strictly as per merit and by adjusting each of them in the respective vertical reservations and by following the procedure as laid down under the rules. This process should be completed as expeditiously as possible, and in any case, within a period of less than four weeks from today.

Rule made absolute accordingly with no order as to costs.

After the pronouncement of the judgment, Shri Sapkal, learned Additional Government Pleader, submitted an oral application for stay to this decision and also he sought leave to appeal. For the elaborate reasonings, we have set out in our judgment and our final directions are not likely to disturb the students admitted in other Government medical collages, we do not see any merit in the said prayers. The oral application is, therefore, rejected.