

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION***

**WRIT PETITION NO. 2393 OF 2017**

Yellamalli Venkatapriyanka, age 19 years, ]  
presently residing at Room No.106, Shiv ]  
Ganesh Building, Antophill Road, Wadala, ]  
Mumbai – 400 037 ]... Petitioner

Versus

1 State of Maharashtra, through its ]  
Department of Medical Education & Drugs ]  
Mantralaya, Bombay. ]

2 State Common Entrance Test Cell, ]  
Regional Office: CET CELL (DMER), ]  
Govt. Dental College & Hospital Building, ]  
St. George's Hospital Compound, ]  
Near V.T., Mumbai – 400 001. ] ... Respondents

**WITH  
WRIT PETITION NO. 2327 OF 2017**

Gopal Bhawarlal Purohit, age 19 years, ]  
presently residing at 83/89, Ishak Building, ]  
3<sup>rd</sup> Floor, Room No.1/6, Bhandari Street, ]  
Goldeval, Girgaon, Mumbai – 400 004. ]... Petitioner

Versus

1 State of Maharashtra, through its ]  
Department of Medical Education & Drugs ]  
Mantralaya, Bombay. ]

2 State Common Entrance Test Cell, ]  
Regional Office: CET CELL (DMER), ]  
Govt. Dental College & Hospital Building, ]  
St. George's Hospital Compound, ]

Near V.T., Mumbai - 400 001.

] ... Respondents

**WITH**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7327 OF 2018**

Shaikh Chakkiwala Harimatiya Khalil, ]  
age 19 years, Occ: Education, R/at Village ]  
Nandurbar, Tahsil-Nandurbar, ]  
Dist. Nandurbar ] ... Petitioners

Versus

1 The State of Maharashtra, through the ]  
Secretary for Medical Education and Drugs ]  
Department, Mantralaya, Mumbai ]

2 The Director of Medical Education And ]  
Research and competent authority, ]  
Government Dental College and Hospital ]  
Building,, 4<sup>th</sup> Floor, St George Hospital ]  
Compound, Mumbai ]

3 The Director of Ayush, ]  
Government Dental College and Hospital ]  
Building, 4<sup>th</sup> Floor, St. George Hospital ]  
Compound, Mumbai ]

4 The Commissioner, Admissions Regulating ]  
Authority & Commissionerate of State CET ]  
Cell, 305, Government Polytechnic Building ]  
Kherwadi, Ali Yawar Jung Marg, Bandra ]  
(East), Mumbai - 400 051 ]

5 The Principal, Mahila Homeopathic Medical ]  
College & Hospital, Solapur, 283/1B, ]  
Kolgiri Nagar, Motgi Road, Majrewadi, ]  
Solapur. ]

6 Medical Council of India, having office at: ]  
 Pocket-14, Sector-B, Dwarka, Phase-I, ]  
 New Delhi 110077, INDIA ]

7 The Union of India, through the Ministry ]  
 of Health & Family Welfare, Nirman Bhavan ]  
 New Delhi - 110 011. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6339 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO. 1560 OF 2018**  
**IN**  
**WRIT PETITION NO. 1560 OF 2018**

Ammara Mehmood Kauchali, age 19 years, ]  
 presently residing at 102, "A" Wing, Coral ]  
 Crest Colony, Sector 23, Nerul, ]  
 Navi Mumbai - 400 706 ] ... Petitioners

Versus

1 State of Maharashtra, through its ]  
 Department of Medical Education & Drugs ]  
 Mantralaya, Bombay. ]

2 Director Medical Education & Research, ]  
 St. George's Hospital Compound, Mumbai ]

3 Commissioner, Common Entrance Test Cell ]  
 Government Dental College & Hospital ]  
 Building, St. George's Hospital Compound, ]  
 Mumbai 400 001. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6340 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO. 1558 OF 2018**  
**IN**  
**WRIT PETITION NO. 6340 OF 2018**

Tilak Rajesh Chavan, age 18 years, presently ]  
residing at C/o. Dr. Amar Rathod Pravasi ]  
Room No.19, Opp. Potdar Hospital, ]  
Dr. A.B. Road, Worli, Mumbai – 400 030. ]

Versus

1 State of Maharashtra, through its ]  
Department of Medical Education & Drugs ]  
Mantralaya, Bombay. ]

2 Director Medical Education & Research, ]  
St. George's Hospital Compound, Mumbai ]

3 Commissioner, Common Entrance Test Cell ]  
Government Dental College & Hospital ]  
Building, St. George's Hospital Compound, ]  
Mumbai 400 001. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6372 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO. 1561 OF 2018**  
**IN**  
**WRIT PETITION NO. 6372 OF 2018**

Vikram Atul Birla, Age 18 years, presently ]  
residing at Flat No.403, Regency Heights, ]  
Sector-13, Jadhavwadi, Chikhali, PCNTDA, ]  
Pune 411 109 ] ... Petitioner

Versus

1 State of Maharashtra, through its ]  
Department of Medical Education & Drugs ]  
Mantralaya, Bombay. ]

2 Director Medical Education & Research, ]  
St. George's Hospital Compound, Mumbai ]

3 Commissioner, Common Entrance Test Cell ]  
Government Dental College & Hospital ]  
Building, St. George's Hospital Compound, ]  
Mumbai 400 001. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6385 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO. 1559 OF 2018**  
**IN**  
**WRIT PETITION NO. 6385 OF 2018**

Sankalp Bhushan Chimdyalwar, Age 18 ]  
years, presently residing at At Post Mul, ]  
Taluka: Mul, District : Chandrapur ] ... Petitioner

Versus

1 State of Maharashtra, through its ]  
Department of Medical Education & Drugs ]  
Mantralaya, Bombay. ]  
  
2 Director Medical Education & Research, ]  
St. George's Hospital Compound, Mumbai ]  
  
3 Commissioner, Common Entrance Test Cell ]  
Government Dental College & Hospital ]  
Building, St. George's Hospital Compound, ]  
Mumbai 400 001. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6777 OF 2018**

Aparna s/o Anand Bharne, age 18 years, ]  
Occ: Student, R/o R-98, Sector-4. Navi ]  
Mumbai, Thane, Akroli, Maharashtra, ]  
At present: R/o. S.P. Bhagat, H.No.1-2-1483 ]  
Near Hanmante Hospital, Shivaji Nagar, ]  
Nanded. ] ... Petitioner

Versus

- 1 The State of Maharashtra, ]  
 Health Education Department, Through ]  
 its Secretary, Mantralaya, Mumbai – 32 ]  
 (Copy to be served on Government Pleader ]  
 High Court of Bombay Bench at Aurangabad]
- 2 Director of Medical and Education Research]   
 (D.M.E.R.), CET CELL, Government Dental ]  
 College & Hospital Building, St. George's ]  
 Hospital Compound, Near CSTM, ]  
 Mumbai – 400 001. ]
- 3 Commissioner, Common Entrance Cell, ]  
 Mumbai, 8<sup>th</sup> Floor, New Excelsior Building ]  
 A.K. Nayak Marg, Fort, Mumbai 400 001. ] ...Respondents

**WITH**  
**WRIT PETITION NO. 6778 OF 2018**

Vivek s/o Mallikarjun Shankad, age 19 years ]  
 Occ: Student, R/o Lingayat Galli, Aurad (Sh) ]  
 Tq. Nilanga, Dist. Latur ] ... Petitioner

Versus

- 1 The State of Maharashtra, ]  
 Health Education Department, Through ]  
 its Secretary, Mantralaya, Mumbai – 32 ]
- 2 Director of Medical and Education Research]   
 (D.M.E.R.), CET CELL, Government Dental ]  
 College & Hospital Building, St. George's ]  
 Hospital Compound, Near CSTM, ]  
 Mumbai – 400 001. ]
- 3 Commissioner, Common Entrance Cell, ]  
 Mumbai, 8<sup>th</sup> Floor, New Excelsior Building ]  
 A.K. Nayak Marg, Fort, Mumbai 400 001. ] ...Respondents

**WITH**  
**WRIT PETITION NO. 6779 OF 2018**

Abhishek s/o Basawaraj Belure, age 17 years ]  
 minor, Occ: Student, Through his father ]  
 Basawaraj s/o Sangappa Belure, age 54 ]  
 years, Occ: Business, R/o Ganesh Nagar, ]  
 Aurad (Sh.), Tq. Nilanga, Dist. Latur ] ... Petitioner

Versus

1 The State of Maharashtra, ]  
 Health Education Department, Through ]  
 its Secretary, Mantralaya, Mumbai - 32 ]  
 (Copy to be served on Government Pleader ]  
 High Court of Bombay Bench at Aurangabad]

2 Director of Medical and Education Research]   
 (D.M.E.R.), CET CELL, Government Dental ]  
 College & Hospital Building, St. George's ]  
 Hospital Compound, Near CSTM, ]  
 Mumbai - 400 001. ]

3 Commissioner, Common Entrance Cell, ]  
 Mumbai, 8<sup>th</sup> Floor, New Excelsior Building ]  
 A.K. Nayak Marg, Fort, Mumbai 400 001. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6780 OF 2018**

Mohammed Mutayab Uddin s/o Mohammed ]  
 Mujeebuddin, age 18 years, Occ: Student, ]  
 R/o H.N.44, Pandri Galli, Main Road, ]  
 Karkheli, Tq.Himayatnagar, Nanded ] ...Petitioner

Versus

1 The State of Maharashtra, ]  
 Health Education Department, Through ]  
 its Secretary, Mantralaya, Mumbai - 32 ]  
 (Copy to be served on Government Pleader ]

High Court of Bombay Bench at Aurangabad]

- 2 Director of Medical and Education Research]   
 (D.M.E.R.), CET CELL, Government Dental ]   
 College & Hospital Building, St. George's ]   
 Hospital Compound, Near CSTM, ]   
 Mumbai – 400 001. ]
- 3 Commissioner, Common Entrance Cell, ]   
 Mumbai, 8<sup>th</sup> Floor, New Excelsior Building ]   
 A.K. Nayak Marg, Fort, Mumbai 400 001. ] ...Respondents

**WITH**  
**WRIT PETITION NO. 6781 OF 2018**

- Mohammad Shoaib Mujtaba s/o Mohammad ]   
 Ilyas, Age 18 years, Occ: Student, R/o 6-1-176 ]   
 Kumbhar Tekadi, Hatai, Itwara, Nanded, ]   
 Maharashtra – 431 604. ] ...Petitioners

Versus

- 1 The State of Maharashtra, ]   
 Health Education Department, Through ]   
 its Secretary, Mantralaya, Mumbai – 32 ]   
 (Copy to be served on Government Pleader ]   
 High Court of Bombay Bench at Aurangabad]
- 2 Director of Medical and Education Research]   
 (D.M.E.R.), CET CELL, Government Dental ]   
 College & Hospital Building, St. George's ]   
 Hospital Compound, Near CSTM, ]   
 Mumbai – 400 001. ]
- 3 Commissioner, Common Entrance Cell, ]   
 Mumbai, 8<sup>th</sup> Floor, New Excelsior Building ]   
 A.K. Nayak Marg, Fort, Mumbai 400 001. ] ...Respondents

**WITH**  
**WRIT PETITION NO. 6782 OF 2018**

Gaurav s/o Dwarkanath Pawar, age 17 years ]  
 & 11 months minor Occ: Education Through ]  
 his legal guardian Dwarkanath s/o Narayan ]  
 Pawar, age 49 years, Occ: Service R/o Flat ]  
 No.210, Rajendra Complex Dawkhari Chawl, ]  
 Ward No.7, Shrirampur, Tq. Shrirampur ]  
 District : Ahmednagar ] ... Petitioners

Versus

1 The State of Maharashtra, ]  
 Health Education Department, Through ]  
 the Secretary for Medical Education and ]  
 Drugs Department, Mantralaya, Mumbai ]  
 2 The Director of Medical Education And ]  
 Research (DMER), Government Dental ]  
 College & Hospital Compound, Near CSTM, ]  
 Mumbai - 400 001. ]  
 3 The Commissioner, Common Entrance Cell, ]  
 Mumbai, Government Dental College and ]  
 Hospital Building, St. George Hospital ]  
 Compound, Near CST, Mumbai 400 001. ] ... Respondents

**WITH**  
**WRIT PETITION NO. 6783 OF 2018**

Mahadev s/o Dilip Chavan, Age 17 years, ]  
 Occ: Education Through Natural Guardian ]  
 Vimal w/o Dilip Chavan, Age 42 years, ]  
 Occu: Service, R/o Chincholi, Village Chincholi ]  
 Dist. Hingoli ] ... Petitioner

Versus

1 The State of Maharashtra, ]  
 Health Education Department, Through ]  
 its Secretary, Mantralaya, Mumbai - 32 ]  
 (Copy to be served on Government Pleader ]

High Court of Bombay Bench at Aurangabad]

2 Director of Medical and Education Research]  
(D.M.E.R.), CET CELL, Government Dental ]  
College & Hospital Building, St. George's ]  
Hospital Compound, Near CSTM, ]  
Mumbai – 400 001. ]

3 Commissioner, Common Entrance Cell, ]  
Mumbai, 8<sup>th</sup> Floor, New Excelsior Building ]  
A.K. Nayak Marg, Fort, Mumbai 400 001. ] ...Respondents

**WITH**  
**WRIT PETITION NO. 6784 OF 2018**

Aishwarya d/o Shivkumar Deshmukh, age ]  
20 years, Occ: Student, R/o Kawa Naka, Near ]  
Jindal Tower, Basweshwar Chowk, Latur, ]  
Tq. Dist. Latur ] ... Petitioner

Versus

1 The State of Maharashtra, ]  
Health Education Department, Through ]  
the Secretary for Medical Education and ]  
Drugs Department, Mantralaya, Mumbai ]

2 The Director of Medical Education And ]  
Research (DMER), Government Dental ]  
College & Hospital Compound, Near CSTM, ]  
Mumbai – 400 001. ]

3 The Commissioner, Common Entrance Cell, ]  
Mumbai, Government Dental College and ]  
Hospital Building, St. George Hospital ]  
Compound, Near CST, Mumbai 400 001. ] ...Respondents

**WITH**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION (LODG) NO. 1947 OF 2018**

Ritika Radhakrishnan, age 18 years ]  
 Occupation Student, Residing at 102, ]  
 Rajnigandha, Poonam Complex, 90 Feet Road ]  
 Opp. Nirmala College, Ashanagar, ]  
 Thakur Complex, Kandivali (East), ]  
 Mumbai – 400 101. ] ... Petitioners

Versus

1 State of Maharashtra through its Secretary ]  
 Health Education Department, Mantralaya ]  
 Mumbai – 400 032. ]

2 Director of Medical Education & Research ]  
 Government Dental College and Hospital ]  
 Building, St. George's Hospital Compound ]  
 Near V.T., Mumbai 400 001. ]

3 Commissioner, Common Entrance Cell, ]  
 Mumbai CET Cell, Government Dental ]  
 College and Hospital Building, St. George's ]  
 Hospital Compound, Near V.T. ]  
 Mumbai – 400 001. ] ... Respondents

**APPEARANCES IN APPELLATE SIDE WRIT PETITIONS:**

WRIT PETITION NOS.7327/2018, 6339/2018 WITH CA 1560/2018, WP 6340/2018 WITH CA1558/2018, WP 6372/2018 WITH CA 1561/2018 AND WP 6385/2018 WITH CA 1559/2018.

Mr. V.M. Thorat with Pooja Thorat and Anukul for the Petitioners.

Mr. A.A. Kumbhakoni, Advocate General, with Mr. Akshay Shinde with Mrs. Shruti D. Vyas 'B' Panel Counsel for the Respondent-State.

Mr. S.S. Patwardhan for the Respodent No.3.

Mr. M.M. Vashi, senior counsel with Ms. Aparna Devkar, Mr. Sankalp Anantwar, Mr. Dinesh Bhatia and Mr. Anurag Mankar i/b Pan India Legal Service for the Applicants in the Civil Applications.

WRIT PETITION NOS.6777/2018, 6780/2018 & 6781/2018

Mr. Zia Ul Mustafa & Quadri Taher Ali for the Petitioners.

Mr. A.A. Kumbhakoni, Advocate General with Mr. Akshay Shinde and Ms. Shruti D. Vyas 'B' Panel Counsel for the Respondent-State.

WRIT PETITION NOS.6778/2018, 6779/2018 & 6784/2018

Ms. Pradnya Talekar with Madhvi Ayyapan i/b Shri S.B. Gastgar for the Petitioners.

Mr. A.A. Kumbhakoni, Advocate General with Mr. Akshay Shinde and Ms. Shruti D. Vyas 'B' Panel Counsel for the Respondent-State.

WRIT PETITION NO. 6782 OF 2018

Mr. Ashwin V. Hon with Ajit D. Hon for the Petitioners.

Mr. A.A. Kumbhakoni, Advocate General with Mr. Akshay Shinde and Ms. Shruti D. Vyas 'B' Panel Counsel for the Respondent-State.

WRIT PETITION NO. 6783 OF 2018

Mr. S.P. Rathod for the Petitioner.

Mr. A.A. Kumbhakoni, Advocate General with Mr. Akshay Shinde and Ms. Shruti D. Vyas 'B' Panel Counsel for the Respondent-State.

**APPEARANCES IN ORIGINAL SIDE WRIT PETITIONS :**

**WRIT PETITION NOS.2393/2017 & 2327/2017**

Mr. Vijay M. Thorat with Ms. Pooja Thorat and Mr. Anukul Seth for the Petitioners.

Mr. Ashutosh A. Kumbhakoni, Advocate General with Ms. Jyoti Chavan, AGP and Ms. Deepali Patankar, AGP, for the Respondent-State.

Mr. S.S. Patwardhan for the Respondent No.3.

**WRIT PETITION (L) NO. 1947 OF 2018**

Mr. C.R. Naidu with Mr. Atharva Dandekar for the petitioner.

Mr. Ashutosh A. Kumbhakoni, Advocate General with Ms. Jyoti Chavan, AGP and Ms. Deepali Patankar, AGP, for the Respondent-State.

Mr. S.S. Patwardhan for the Respondent No.3.

Mr. Sanjay Deshmukh, Secretary, Medical Education and Drugs Department present in Court.

Dr. P.H. Shingare, Director, Medical Education and Research, Mumbai (DMER).

**CORAM : S.C. DHARMADHIKARI &  
SMT. BHARATI H. DANGRE, JJ.**

**THURSDAY, 26TH JULY 2018**

**ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]**

1            These petitions, under Article 226 of the Constitution of India, raise common questions of fact and law. They were heard together and are being disposed of by this common

judgment.

2           In such of the Writ Petitions which have been filed and not formally admitted, we grant Rule. The respondents waive service. We have been informed that the State Government has filed a comprehensive affidavit in a Writ Petition on the Original Side being Writ Petition (Lodg.) No. 1947 of 2018. That sets out the stand common to all the matters and, therefore, that is adopted in the other petitions by the contesting respondents.

3           As is usual in this Court and in the academic sessions, despite warning signals, reminders as also admonishment from the Hon'ble Supreme Court, the state of affairs with regard to admissions to undergraduate courses in medicines have not improved in the State of Maharashtra. In this regard, we can usefully refer to the anguish expressed by the Hon'ble Supreme Court while delivering its judgment in the case of *Saurabh Choudri & Ors. vs. Union of India & Ors.* That decision is reported in (2003) 11 SCC 146. The lead judgment is delivered by the then Hon'ble Chief Justice of India V.N. Khare, J. and there are concurring opinions rendered by Hon'ble Mr. Justice S.B. Sinha

and Hon'ble Mr. Justice Dr. A.R. Laxmanan. In the concurring judgments it has been pointed out as to how the issues crop up year after year and there is confusion and chaos all over. In paragraph 94 of this judgment, the Court observed as under :

*“94. For admissions to undergraduate programmes, there are several different eligibility norms among the different categories of institutions and among the various States. Some are based on twelfth standard marks or grades only, some are based on the entrance examination only and some are determined by a combination of these with different weightages. There is an endless number of justifications for each of the above, confusing the students from different parts of the country.”*

4 Before paragraph 94 of the judgment, the Hon'ble Supreme Court observed as under :

*“While concurring with the conclusion arrived at by the Hon'ble the Chief Justice, I would like to add the following few lines for streamlining the policies and processes for admission to medical courses and other professional courses. The issues and options are discussed below :*

*Every year during the admission season several lakhs of students undergo immense suffering and harassment in seeking admission to professional courses caused by uncertain policies, ambiguous procedures and*

*inadequate information. The miseries of students and parents are escalating year after year due to boundless expansion in the number of professional institutions and their intake capacity, emergence of a large variety of newer disciplines and mobility of students seeking admissions beyond the boundaries of States. The students who are about to complete their high school education go through a period of acute anxiety caused by the uncertain situation about their chances for further education. The number of qualified students wanting to go for higher studies has been swelling, largely motivated by hopes of better economic security and partly by a desire to attain greater upward social mobility. Then begins their trauma due to many prevailing unfair practices in admissions and devious ways of fee collections exploiting the anxiety of students and uncertainty of procedures. Most of the efforts to deal with these problems are ad hoc in nature often decided under judicial orders. Different State and Central authorities take many different actions often leading to severe inconsistencies. There is substantial scope for streamlining the admission process, even within the regulatory powers of the authorities, provided these issues are not dealt with on an emergency basis during the admission season but done in a coordinated and comprehensive manner ahead of time.”*

5                   We have a repeat story this year as well.

6           We can take with advantage, the facts which are set out in two Writ Petitions from Bombay and we are informed that there are more or less identical circumstances in which the students from the Benches, namely, Aurangabad and Nagpur have been placed. Similarly, there are intervenors on both sides, the intervening students supporting the petitioners and the intervening students supporting the stand of the State Government.

7           In Writ Petition (L) No.1947 of 2017 the facts are that the petitioner Ritika Radhakrishnan was desirous of pursuing education in the undergraduate course, namely, MBBS. She has impleaded in the writ petition, the State of Maharashtra and the Directorate of Medical Education and Research. She has also impleaded an authority styled as Commissioner, Common Entrance Cell, Mumbai. It is stated that the first respondent - State is in overall control and supervises the conduct of medical education in the State of Maharashtra. The second respondent is a Directorate set up by the State styled as Directorate of Medical Education and Research. It is monitoring and supervising the working of Medical and Dental colleges in the State of

Maharashtra. It is stated that the third respondent, Common Entrance Test Cell, Commissioner (for short “The Commissioner”) is responsible for conducting the admission process for all Health Science Courses in the State of Maharashtra.

8           There was a National Eligibility-Cum-Entrance Test which is mandatory for admission to health science courses all over India and specially the MBBS course. The petitioner appeared for such an examination / test and says that she has cleared it with 98.43 percentile score. It is stated that she completed her tenth standard (“for short SSC” ) from within the State of Maharashtra and particularly in the city of Mumbai. She is also domiciled in the State of Maharashtra. However, for the Higher Secondary Certificate, namely, twelfth standard examination, she appeared from a School / Institution situate in the State of Kerala.

9           She came across, what is styled as an Information Brochure. We would have to say something about this document for it is primarily responsible for the confusion and chaos prevailing in the State of Maharashtra. The third respondent –

Commissioner published this Information Brochure of preference system for admission to health science courses in State Government / Corporation / Private and Minority Colleges for MBBS / BDS / BAMS / BHMS / BUMS / BPTd and other courses. It is titled as NEET UG-2018. It says that it is for prescribing a schedule and for the admission process. There are various stages after declaration of the results of the National Eligibility Test. These are enlisted prior to the introductory portion. It is stated that the Medical Council of India published a Gazette dated 23<sup>rd</sup> June, 2017. Clause 5(A) regarding common counselling is, therefore, added therein. Then it says that insofar as the process is concerned, eighty five per cent seats are earmarked for students in the State of Maharashtra. Fifteen per cent are styled as 'All India Quota' or percentage of seats.

10           The Information Brochure says that merit list for seats under State Quota of Maharashtra will be prepared and that will be operative.

11.           There are various definitions set out in this Information Brochure and particularly in clause 3 thereof. The

“Act” is a word defined to mean the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 (for short 'Maharashtra Act No.XXVIII of 2015'). Then there is a definition of the term 'CAP Seats', CAP Students' and 'Common Admission Process'. That is, according to this definition, a process for admission carried out by the competent authority / the Commissioner. The course means the Undergraduate Medical Course or Undergraduate Dental Course, as the case may be, conducted in the State as per approval of the Medical Council of India and Dental Council of India and affiliated to the Maharashtra University of Health Sciences. The term 'Eligible Candidates' is defined in clause 3 sub-clause (h) to mean a candidate who is eligible for different professional courses as notified by the Government from time to time under sub-section (1) of section 3 of the Maharashtra Act XXVIII of 2015.

12           The following definitions are relevant for our purpose:

“... ..

i       *“HSC” means the Higher Secondary School Certificate (Standard XII) examination conducted by Maharashtra State Board of Secondary and Higher Secondary Education as per the provisions of the*

*Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Mah. XLI of 1985) or its equivalent certificate awarded by a recognised Board;*

*j “Institutional Quota” means seats available for admission to eligible Candidates at Institution level as declared by the Government for appropriate authority from time to time;*

*... ..*

*o “National Eligibility-cum-Entrance Test” or “NEET” means the examination conducted by Central Board of Secondary Education, Delhi for admission to under graduate Medical and Dental courses.*

*p “Non-Resident Indian (NRI)” means a person who is “not ordinarily resident” under sub-section 6 of the Income Tax Act, 1961, and includes a person resident outside India under clause (w) of the Foreign Exchange Management Act, 1999, and also includes his child or ward;*

*q “Overseas Citizen of India (OCI)” means a candidate or a person registered as an Overseas Citizen of India as declared by the Central Government under section 7A of the Citizenship Act 1955, and includes Persons of India Origin (PIO).*

*Explanation.-For the purposes of this clause, all the existing Persons of Indian Origin (PIO) card-holders registered under Notification of the Government of*

*India, Ministry of Home Affairs No.F.No. 26011/04/98-F.I, dated 19<sup>th</sup> August 2002 and shall now be deemed to be Overseas Citizens of India, (OCI) cardholders by virtue of Notification of Government of India, Ministry of Home Affairs No. 25024/9/2014-F.I, dated 9<sup>th</sup> January 2015;*

*r “Qualifying Examination” means the Higher Secondary Certificate (12<sup>th</sup> Standard) or equivalent examination, from an Institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology (Botany and Zoology) at the time of admission;*

*s ... ..*

*t “SSC” means the Secondary School Certificate (Standard X) examination conducted by Maharashtra State Board of Secondary and Higher Secondary Education as per the provisions of the Maharashtra Secondary and High Secondary Education Boards Act, 1965 (Mah. XLI of 1965) or its equivalent certificate awarded by a recognised Board;”*

13            Since the petitions impugn some sub-clauses of clause 4, we deem it appropriate to reproduce the entire clause 4 with its sub-clauses for a better appreciation of the whole matter.

***“4. ELIGIBILITY FOR ADMISSION TO HEALTH  
SCIENCES DEGREE COURSES***

*4.1 The candidate must be an Indian National. However Non Resident Indian (NRI) will be eligible only on all India basis in private unaided college in NRO Quota.*

*4.1.1 Indian Citizen*

*4.1.2 Overseas Citizen of India (OCI) Candidates will be eligible for Government / Corporation / Government Aided / Private unaided college for academic year 2018-19 and 2019-20 only. Provided such candidate have passed 10<sup>th</sup> & 12<sup>th</sup> from the State of Maharashtra and should be domicile of Maharashtra or staying in State of Maharashtra for minimum period of 10 years. (As per Annexure - M).*

*4.1.3 NRI candidates will be eligible for institutional quota seat only, NRI candidate will not be eligible for other seat (As per Annexure-U).*

*4.2 Domicile of Candidate: - The Candidates must be Domicile of Maharashtra (Except candidates under clause 4.1.3, 4.7, 4.8, Annexure C and E).*

*4.3 The candidate must be born on or before 31<sup>st</sup> December 2001 to be eligible for all the courses except Ayurved and Unani courses. However, for admission to Ayurved and Unani courses, candidate must be born on or before 1<sup>st</sup> October, 2001. The Birth certificate indicating name of the candidate, Secondary School Certificate i.e. SSC or equivalent examination certificate or School Leaving Certificate endorsing the date of birth will constitute a valid proof.*

*4.4 The candidate must be medically fit and must submit a certificate of medical fitness at the time of Document Verification as per proforma. (Annexure-"H")*

*4.5 The candidate must have passed the SSC or equivalent examination from an institution situated in the State of Maharashtra (Please refer 4.7, 4.8, Annexure "C" & Annexure "" for exception)*

*4.6 The candidate must have passed the qualifying examination i.e. Higher Secondary Certificate (HSC/12<sup>th</sup> Standard) or equivalent examination from an Institution situated in the State of Maharashtra. Please refer 4.7, 4.8, Annexure "C" & Annexure "E" for exception) with English, Physics, Chemistry and Biology (Botany & Zoology) at the time of document verification.*

*4.6.1 Eligibility criteria for Qualifying Examination for various courses*

*4.6.1.1 For MBBS/BDS/BAMS/BUMS, A candidate belonging to Open Category must have obtained not less than 50% (i.e. 150 out of 300) marks in Physics, Chemistry and Biology taken together at the HSC (or equivalent) Examination. A candidate belonging to constitutional reservation (Annex. B) and constitutional reservation with Person with disability claim must have obtained not less than 40% (i.e. 120 out of 300) marks in Physics, Chemistry and Biology taken together at the HSC (or equivalent) Examination. Person with disability candidate in General*

*category must secure not less than 45% marks (i.e. 135 out of 300) marks in Physics, Chemistry and Biology (PCB) taken together at the HSC (or equivalent) Examination.*

*4.6.1.2 For B.Sc Nursing – A candidate should have passed in the subjects of PCB and English individually and must have obtained a minimum of 45% marks taken together in PCB at the qualified examination i.e. (10 + 2). Furthermore, the candidates belonging to SC/ST or other backward classes, the marks obtained in PCB taken together in qualifying examination be 40% instead of 45% stated above. English is a compulsory subject in 10 + 2 for being eligible for admission to B.SC (N) OR as prescribed by the Indian Nursing Council from time to time.*

*4.6.1.3 For BIMS, BPTH, BOTh, BASLP & BP & O Courses, Clause 4.6.1.1 is not applicable. Passing grade at HSC/12<sup>th</sup> Standard or equivalent examination is however necessary.*

*4.6.1.4 For admission to BP&O candidates who have passed 12<sup>th</sup> standard examination with Physics, Chemistry,*

*Biology and/or Mathematics are eligible.*

*4.6.1.5 For admission to BASLP, candidates who have passed 12<sup>th</sup> standard examination with Physics, Chemistry, Biology and / or Mathematics and/or Computer Science are eligible.”*

14           The petitioner then says that she was born in the State of Maharashtra at Mumbai on 22<sup>nd</sup> February, 2000. A copy of her birth certificate is annexed to the petition as Exhibit-A. The petitioner says that she continued to reside in Maharashtra and is in fact, domiciled in Maharashtra. Exhibit-B is a copy of the Domicile Certificate issued by the Tahsildar and Executive Magistrate, Taluka Borivali, Mumbai Suburban District. The petitioner then continues her narration and with regard to her schooling and fees; that she completed her class tenth (SSC) and obtained that certificate in Mumbai from an Educational Institution situate at Kandivali East, Mumbai on 6<sup>th</sup> May, 2016. Annexed as Exhibit-C is a copy of this SSC certificate. Then she says that due to some reasons, she was sent by her parents to pursue her class eleventh and class twelfth studies in the State of

Kerala at St. Anthony's Public School in Kanjirapally, Kottayam in the State of Kerala. She completed her education in class eleventh and class twelfth with the Science subjects on 30<sup>th</sup> May, 2018. She relies upon Exhibit-D to substantiate her clearance of this HSC / class twelfth examination.

15           The petitioner then says that she appeared for the NEET in the year 2018. The results were declared and she scored the above stated percentile marks. She obtained an All India Rank of 19653. Since the petitioner has done well in this NEET and was desirous of pursuing her goal of becoming a doctor, she obtained a copy of the Information Brochure from the State authorities and particularly the respondent No.3.

16           On a perusal thereof, it became clear that there are meritorious high ranking students and she would be held to be ineligible for admission to the MBBS course from the State Quota (Maharashtra Government 85% Quota of seats) only because she has not cleared and passed her qualifying examination from within the State of Maharashtra, but outside.

17           It is in the above circumstances, on several grounds, she has challenged the said clause 4, particularly its sub-clause 4.6 reproduced above on the ground that the same is illegal and unconstitutional. The consequential relief is, therefore, a writ of mandamus which should go to the authorities to accept the petitioner's application form for admission to Health Science Courses for the academic year 2018-19, process the same from the State Quota and grant her admission to any Educational Institution imparting this course within the State of Maharashtra.

18           That is how the consequential prayers (b) and (c) read.

19           When this writ petition was placed before us, it was brought to our notice that the issue is raised in several petitions pending before the Aurangabad Bench. Our attention was also invited to a notice issued by the Commissioner - third respondent to this petition on 13<sup>th</sup> June, 2018. After perusing the same, and a copy of the order passed by the Nagpur Bench of this Court on this petition, an order was passed by us on 19<sup>th</sup> June, 2018 which

reads as under :

*"In this Petition the issue raised is of legality and validity of Rule 4.5 and Rule 4.17 of the Rules and which are styled as the NEET-UG-2018 Rules contained in the Information Brochure of Preference System for admission to Health Sciences Course in State Government / Corporation / Private and Minority Colleges. A copy of these Rules is annexed to the Writ Petition as Exhibit 'F' page 27 and the impugned Rules appear at pages 34 and 38 of the paper-book.*

2. *Our attention has been drawn by the learned AGP to a notice which has been issued by the Commissioner and the Competent Authority, State Common Entrance Test Cell, Mumbai. This Notice reads as under :-*

*"As mentioned in Information Brochure of NEET-UG-2018 for admission to State Quota in Health Sciences Courses in the State of Maharashtra the eligibilities are mentioned in Rule No. 4.2, 4.5 and 4.6 as under :-*

*" The student must be domiciled in the State of Maharashtra and must have passed the SSC and HSC examination from an Institution situated in the State of Maharashtra."*

*Hon'ble High Court, Bombay, Bench at Nagpur directed in interim order dated 11/06/2018 in Writ Petition No. 3164/2018 & Others as under -*

*"The Candidate who have passed SSC or equivalent examination from an Institution situated outside the State of Maharashtra is also eligible subject to final decision in said petition, provided he/she has passed HSC or qualifying examination from an Institution situated in the State of Maharashtra and also possess Domicile Certificate of the State of Maharashtra."*

*All such candidates who become eligible as per Hon'ble High Court order and could not fill online registration form till 12/06/2018 of NEET-UG-2018 for Maharashtra State Quota can register online from 13/06/2018 to 17/06/2018.*

*However, the last date i.e. 17/06/2018 will not be extended."*

3. *In view of this notice the grievance of the Petitioners in these Petitions has been redressed, of course subject to the final orders in the pending Writ Petitions.*

4. *Ms. Kantharia, Govt. Pleader and Ms. Chavan, AGP would submit that we should not pass any order in terms of the above notice because in this Petition the facts are not the same. This Petitioner has not passed the HSC (12<sup>th</sup> Std. Examination) from the State of Maharashtra, but elsewhere. Hence he is not eligible at all. In the other Petitions the Petitioners had passed the 12<sup>th</sup> Std. qualifying Examination in the State of Maharashtra but had not passed their 10<sup>th</sup> Std. Examination from the State and hence they are protected. Therefore, in this Petition we*

*should not pass any interim orders.*

5. *At this stage, we are unable to accept this contention and for the simple reason that if the Petitioner has challenged the constitutional validity and legality of the same Rules in the Brochure, then, we cannot make any distinction as pointed out by Ms. Kantharia and Ms. Chavan. Hence, we pass the same interim order passed today in Writ Petition No. 6339 of 2018 a/w. Writ Petition No. 6340 of 2018 a/w. Writ Petition No. 6372 of 2018 and Writ Petition No. 6385 of 2018, in this Petition as well."*

20 In this order itself we had noted that though the petitioner claims that she has been admitted, it is, of course, subject to the final orders in the petition. The above order was passed in the presence of the petitioner's advocate and by that order, time was granted to the respondents to file their affidavit. There are other petitions which were tagged along with the same and in that regard, we had passed a further order on 12<sup>th</sup> July, 2018. That order reads as under :

*"1 At the request of Ms. Chavan-AGP appearing for the State, we place these matters, which involve a common question, on 23<sup>rd</sup> July, 2018 peremptorily only not to inconvenience those students, who have been allowed to participate in the on going admission process on the basis of an interim order of this court. It is too*

*well settled that no provisional admissions should be granted nor by interim orders, this court should allow students to be admitted for that creates a confusion and chaos and throws the whole system out of gear. We do not wish to continue such arrangement and for the whole academic year. With this prime concern, we have called the Director of Medical Education and Research to remain present in this court today. On instructions from the said Director, it is stated by Ms. Chavan-AGP that an affidavit in reply common to the issue raised in all these petitions would be filed on or before 20<sup>th</sup> July, 2018 with advance copy to the petitioners' advocate.*

*2 We place these matters on 23<sup>rd</sup> July, 2018 at 3.00 p.m. Let the Director also ensure that a notice is issued on their website as also an intimation is duly forwarded to the students, who have not filed petitions that this court is considering this issue and that they are free to remain present and canvass their submissions.”*

21 It is in pursuance of these two orders that the writ petitions from the Aurangabad Bench of this Court were called for and the writ petitions filed on the Original Side and Appellate Side of this Court as also from Aurangabad Bench were clubbed together and by an administrative order of the Hon'ble the Acting Chief Justice, each of these petitions were assigned to this Bench

for disposal.

22           In response to this petition, the common affidavit came to be filed and that is affirmed by Dr. Pravin H. Shingare, Director, Medical Education and Research. This affidavit is filed on the basis of the documents available with his office. He says that he has perused the copy of the petition and understood the challenge. It is stated that the consolidated affidavit is filed in respect of the legal issue. It is claimed that though this legal issue has been repeatedly answered by this Court in favour of the State, but such petitions continue to be filed.

23           With regard to Writ Petition No.3164 of 2018 filed before the Nagpur Bench of this Court by one Khushabu s/o Ravindra Ghongade, it is stated that the said student passed SSC Examination from a Institution outside the State and was claiming a right to be considered for admission to Health Science Courses in the eighty five per cent State Quota. On 11<sup>th</sup> June, 2018, ad-interim order was passed by this Court, sitting at Nagpur Bench, directing the respondents to that petition to accept the application of the petitioner and to process the same in

the State Quota.

24 On 13<sup>th</sup> June, 2018, that Writ Petition came before a Division Bench at Nagpur and it passed the following order :

*“1. Heard.*

*2. The forms of petitioners for admission to M.B.B.S. degree have not been entertained on the ground that they have passed S.S.C. out of Maharashtra. Screen-shot mentioning this contains reference to point No.26 i.e. reference to clause 4.7 or 4.8 in information brochure. This clause appears to be inconsistent with amendment effected on 2<sup>nd</sup> September, 2016 to Maharashtra Unaided Private Professional Education Institutions (Regulation of Admission in Full Time Professional Undergraduate Medical and Dental Courses) (Amendment) Rules, 2016. Rule 5 has been amended and a provision in the shape of clause (b) enabling S.S.C. or equivalent examination from outside State of Maharashtra is made eligible subject to conditions stipulated therein. Petitioners claim that they have satisfied these conditions.*

*The admission process has already started from 7<sup>th</sup> June, 2018.*

*Issue notice to respondents, returnable on 15<sup>th</sup> June, 2018.*

*Learned Additional Government Pleader waives notice for respondent Nos.1 to 4 in Writ Petition No.3241/2018, for respondent Nos.1 to 3 in Writ Petition Nos. 3242 /2018 and 3231/2018. R.P.A.D. / Hamdast for other respondents.*

*By ad interim order, we direct respondents - the Commissionerate, Common Entrance Cell and - the Competent Authority Common Entrance Test Cell to forthwith take note of above mentioned amendment and to process forms of petitioners accordingly.*

*The respondents shall also in the interest of other students keep in mind the amended provisions.*

*We permit petitioners to communicate this order to respondents - the Commissionerate, Common Entrance Cell and - the Competent Authority Common Entrance Test Cell through E-mail.*

*Steno copy."*

25           It is, therefore, claimed that in pursuance of this order the aforequoted notice was published by the third respondent to this writ petition. Though the order of the Nagpur Bench does not say that the admissions were subject to the outcome of the petition, yet this notice proceeds to say so. It is claimed that, in any event, other petitions have been filed and they are pending.

Therefore, the issue was alive and to the knowledge of all concerned. Additionally, by virtue of this Court's further order of 12<sup>th</sup> July, 2018, reproduced above, notice has been published by this Directorate informing all students that the issue is being examined by this Court and any ad-hoc or interim arrangement with regard to their admission would be subject to the final order of this Court.

26           It is then explained that the order passed on 13<sup>th</sup> June, 2018, by the Nagpur Bench of this Court fails to take into consideration that there is a non obstinate clause and the order proceeds to take note of a clause which was applicable only for the academic year 2016-17. Therefore, the order was based on the understanding of that clause, but the parties persuaded the Nagpur to pass the afore quoted interim order. As far as the present case is concerned, the State Government reiterates that it intends to enforce the alleged offending clause. It is then claimed that though the Nagpur Bench proceeded to dispose of the pending petitions before it on 15<sup>th</sup> June, 2018, that was on a concession of the Assistant Government Pleader. That Assistant Government Pleader made a statement based on the instructions

given by the Commissioner. The Commissioner says that he is not opposing the petition. However, no such instructions were given by the State Government and the concession, therefore, does not bind the State Government. In any event, it is well settled that no amount of concession on a question of law can bind the parties, much less the State Government. Hence, its advocate may have said something, but based on that an order was passed by this Court. That order records a concession on the construction and interpretation of the impugned clause. Therefore, that order, so also the concession recorded therein, would not bind the respondents.

27           In any event, the State Government is in the process of seeking a review of that order passed by the Nagpur Bench.

28           In paragraph 11 of this affidavit it is stated as under:

*“11 It is worthwhile to note the fact that pursuant to the aforesaid notice total 201 students submitted their application online, out of which 67 candidates attended document verification process in first round and out of the 67 candidates 31 candidates were selected for MBBS / BDS Course. Out of 31 selected candidates 14 are selected for*

*Government MBBS and 11 for Private MBBS course, 01 candidate selected for Government BDS and 05 Candidates selected for Private BDS courses. I hasten to state at this juncture itself that in the aforesaid selected candidates not a single candidate who had filed petition at the Nagpur Bench could secure admission at any Health Science Course. Thus I say that the students who never approached any Court of law aggrieved by the impugned Clauses have secured admissions and their admissions are subject to the final decision that may be passed in the present proceedings. I say that all the aforesaid students cannot claim any equity against the rules and regulations that govern admission to the Health Science Courses.”*

29           It is stated that prior to the enactment of the MCI Regulations on Graduate Medical Education 1997 admissions to MBBS/BDS course were governed by the MCI Act, 1956 and the Rules and Regulations framed by the State Government from time to time. The eligibility criteria that was then required was that the student should have passed the qualifying examination, namely, HSC or equivalent Board examination from an Institution situate in the State of Maharashtra.

30           Later on the MCI Regulations on Graduate Medical Education 1997 came to be published. They have been amended

from time to time. The unamended Rule 5, as it stood in 1997, prescribed the basis for selection of the students and unamended Rule 5 of the said Regulations has been reproduced at running page 83 paragraph 14. That unamended clause reads as under :

*“14. I say that thereafter the Medical Council of India, in the year 1997, enacted the Medical Council of India Regulations on Graduate Medical Education, 1997 which have been amended time to time. I say that the UN-amended Rule 5 as it stood in 1997, prescribed the basis for selection of students and the UN-amended Rule 5 of the Medical Council of India Regulations on Graduate Medical Education, 1997 read as under.*

**“5. Selection to Students:** *The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:*

*(1) In states, having only one Medical College and one university / board / examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.*

*(2) In states, having more than one university /*

*board / examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.*

*(3) Where there are more than one colleges in a state and only one university / board conducting the qualifying examination, then a joint selection board be constituted for all the colleges.*

*(4) A competitive entrance examination is absolutely necessary in the cases of Institution of All India character.”*

*... .. ”*

31 Thus, the State Government has mentioned that it was required to conduct a Common Entrance Examination and the Government of Maharashtra in the year 1999 for the first time conducted the Common Entrance Examination for admission to MBBS/BDS courses known as MH-CET. For that examination, the State Government framed Rules and Regulations. Rule 4.4 framed by the Maharashtra University of Health Sciences in the

State required that the student will be eligible for admission to Health Science courses only if he or she has passed the SSC examination from an Institution situate in the State of Maharashtra and furthermore, Rule 4.5 required fulfillment of a condition of eligibility to the effect that every candidate must pass the HSC certificate or equivalent examination from an Institution situate in the State of Maharashtra. It is stated that the validity of the said Rules was challenged before this Court by one Rajiv Purshottam Wadhwa. A judgment of a Division Bench in Rajiv's case was delivered and that is reported in All Maharashtra Reporter 2001 (1) 24. This Court held that insofar as Rule 4.5 enlisting the requirement of passing of both examinations from an Institution situated in the State of Maharashtra is concerned, the same is partially valid to the extent that the qualifying examination for admission to medical courses, namely HSC, is required to be passed from an Institution situate in the State of Maharashtra. The Court, however, granted exemption from the Rule to extent that it required a candidate to pass SSC examination also from an Institution in the State of Maharashtra. However, according to the State Government, that is restricted to academic year 2000-01.

32            Later on, in 2015, Maharashtra Act XXVIII of 2015 was enacted. Section 23 of that Act is relied upon to urge that the rules have been framed and Rule 5 of the Rules under that law, which is styled as Maharashtra Un-Aided Private Professional Educational Institution (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016, sets out identical stipulations.

33            Then, in paragraphs 18, 19 and 20, this is what is stated:-

“18            *I say that the said Rule 5(1)(A) was amended by notification dated 2.9.2016 by the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions to the Full Time Professional Undergraduate Medical and Dental Courses) (Amendment) Rules, 2016.*

19            *I say that apart from the above referred provisions of the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 as amended, Rule 5 of the Medical Council of India Regulations on Graduate Medical Education, 1997 has been amended time to time thereby empowering the State Government to frame its*

*own eligibility criteria in respect of 85% State quota. I crave leave of this Hon'ble Court to refer to and rely upon the relevant provisions of the aforesaid regulations as and when may be required.*

20            *I say that the National Eligibility Cum Entrance Test (Session 2018-19) for Admission to MBBS/ BDS Courses prescribe the criteria for admissions to MBBS /BDS courses session 2018-19. I say that the copy of the said Information Bulletin is already annexed in the compilation which is filed on record by this Respondents. I say that perusal of the aforesaid document would also make it clear that the State Government is empowered to frame its Rules and Regulations in respect of the 85% state quota admissions.”*

34            The stand of the Government of Maharashtra is, therefore, that it is empowered to frame its own Rules and Regulations in respect of the eighty five per cent seat Quota. The eligibility criteria prescribed, namely, of passing tenth and twelfth standard examination from an Institution within the State of Maharashtra has been upheld by this Court repeatedly and identical stipulations have been upheld also by the Hon'ble Supreme Court of India.

35           Then, it is claimed that for the academic year 2017-18, the Government of Maharashtra clarified by a Government Resolution dated 13<sup>th</sup> April, 2017, that it has made the aforesaid Rules and they would be applicable, as amended, even to Government / Municipal Corporation / Aided College imparting medical education.

36           Then, reliance is placed on a judgment of this court in the case of *Shalini Kotian vs. State of Maharashtra* (WP No.6608 of 2016) holding that the Maharashtra Act XV and the Rules framed thereunder can be made applicable to the State or Municipal run medical colleges.

37           It is stated that similar Rules are framed by other States in India and instances of such Rules prevailing in the States of Gujarat, Delhi, Katakana, Punjab, Kerala, Andra Pradesh and Attar Pradesh are referred.

38           In paragraph 27 it is stated that the stipulations have been put in place coupled with the requirement of possessing a domicile certificate taking into account the interest of the State,

the local and regional requirements can also be taken into consideration to weed out candidates, who are not in continuous residence within the State of Maharashtra for 15 years preceding the qualifying examination. These Rules are, therefore, not violative of the mandate of Article 14 of the Constitution of India.

39           It is stated that all candidates / students were aware of the Rules of 2016, as amended. They have knowingly participated in the admission process and, therefore, such of them who do not fulfill or satisfy the eligibility criteria cannot claim admission to the Health Science courses in the State Quota. The petitions to that extent be dismissed.

40           This affidavit has been served now on all the parties, namely, the petitioners and respondents in the other petitions.

41           It is on the above material that we have to consider the challenge, which has been raised in identical terms by one candidate, who has filed Writ Petition No. 2393 of 2017. That writ petition was admitted by this Court, but relying upon the view taken in *Rajiv P. Wadhwa vs. State of Maharashtra* (supra), this

court declined interim relief on 11<sup>th</sup> July, 2017. There, the petitioner claimed that her grandfather was a Government servant in the State of Maharashtra and residing in Maharashtra since last 40 years. Her father was born in 1972 in a remote village in Andhra Pradesh. She has been residing with her grandfather immediately after her birth and completed her education in the State of Maharashtra. She was in Maharashtra right from her Junior KG till tenth standard. However, despite a property being acquired by her father in Maharashtra and there being no dispute about their permanent residence in Maharashtra, still, the petitioner was unable to secure the admission on account of the stipulation that the qualifying / twelfth standard examination had also to be passed from within the State of Maharashtra. Laying a similar challenge, this writ petition has been filed. Then, we have another petition in relation to a student which was argued before us by Mr. V.M. Thorat and Ms. Pooja Thorat. That is Writ Petition No.6385 of 2018. There, the petitioner passed the tenth standard examination from out of the State. However, the petitioner claims that there were compelling circumstances in which this examination was taken from the State of Telangana. The domicile having not undergone

a change, the petitioner could not have been held as ineligible only because this examination was taken and passed from outside the State of Maharashtra. However, the subsequent examinations, namely, eleventh and twelfth standard were cleared within the State of Maharashtra. The petitioner claims to have cleared the NEET examination by securing percentile of 99.77. The petitioner can get any seat on the basis of this percentile, but despite being domiciled in the State of Maharashtra, the stipulation to the above extent and namely of passing tenth standard examination from within the State of Maharashtra, blocks her way. It is, therefore, challenged accordingly.

42           The counsel appearing for the petitioner would submit that the consistent policy of the State Government, except for the year 2000, has been that this examination of tenth standard need not be passed from within the State of Maharashtra. If the candidate fulfills the requirement of being domiciled in the State of Maharashtra, then, this examination being passed and cleared from outside the State did not place any embargo on securing admission in the under graduate Medical Health Science Course.

However, the consistent policy appears to be that the twelfth standard examination should be taken and cleared from within the State of Maharashtra. Relying upon the judgment and order passed in the case of *Rajiv Wadhwa* it is urged by Mr. Thorat that the policy carved out has no nexus with the object sought to be achieved. If the object sought to be achieved is that a candidate domiciled in the State of Maharashtra can only secure admission in the eighty five per cent State Quota, then, that is achieved after fulfilling the requirement of domicile and clearing and passing of the qualifying examination. This is how the State Government and the students arranged their affairs and based on the judgment of this Court in *Wadhwa's* case. Now, the new legislation / Rule has been put in place. That necessitates passing of the tenth and twelfth standard examination from within the State of Maharashtra and particularly in an Institution within the State. This, coupled with the requirement of domicile, would make the student/candidate eligible. Thus, domicile plus tenth plus twelfth standard examination, all being from within the State is the requirement of the new Rule. This Rule violates Article 14 of the Constitution of India as there is no nexus of the same with the object sought to be achieved. The Rule is also

unreasonable, in the sense, it creates a hostile discrimination. The hostile discrimination is that the students who have passed both examinations within the State of Maharashtra and are domiciled in the State of Maharashtra are in an advantageous position, whereas candidates/students like the petitioner, though domiciled in the State of Maharashtra, have to suffer for not fulfilling this criteria of passing, not the qualifying examination of twelfth, but tenth standard SSC from within the State. Precisely this was the issue dealt with by this Court in *Wadhwa's* case. This Court opined that it would be wholly arbitrary, unsustainable, unfair and unjust to make such an artificial distinction between students and candidates domiciled within the State of Maharashtra. In such circumstances, it does not stand to reason as to why an examination which is not a qualifying one has to be cleared from within the State. The student like the petitioner would be deprived of a eighty five per cent Quota or earmarking of seat for the State of Maharashtra candidates though he is a Maharashtrian in the true sense of the term.

43           Elaborating this argument further, Mr. Thorat would submit that such a stipulation is not in place for other

professional courses and where also a State Quota is carved out. In the circumstances, Mr. Thorat would press into service the doctrine of legitimate expectation. He would submit that it is the expectation of the parents and the students and they were consistently informed that if at all the student is seeking admission under the State Quota, he must fulfill the requirement of passing a qualifying examination, namely, twelfth HSC from within the State. Most of the students acting upon such a policy arranged their affairs and may be for genuine and *bona fide* reasons, though residing outside the State for a brief period, returned and took admission to a Educational Institution in the State of Maharashtra. They completed their twelfth standard or eleventh and twelfth standards from such an Institution in the State of Maharashtra.

44           Alternatively and without prejudice, it is submitted that the Government of Maharashtra has accepted the judgment of this Court in Wadhwa's case. It gave up its insistence on the requirement of passing both the examinations from an Institution in the State of Maharashtra. There is, therefore, no justification on such insistence for the current academic year.

45           In any event and further alternatively so also without prejudice to the above noted contentions, it is alleged that rightly or wrongly, the student has been admitted. His admission is not subjected to any order of the Court. Now, the doors are closed to the petitioner insofar as both the Quotas, namely, All India Quota and State Quota. The whole academic year is wasted and on account of the flip-flop on the part of the State.

46           The sheet anchor of the petitioners arguments in all cases is that the above stipulation is nothing, but a departure from merit. If merit is the sole consideration for admission to even under graduate courses and that cannot be sacrificed or compromised, then, that is evidently compromised and totally sacrificed in this case by insisting on fulfilling a requirement of passing examinations (tenth and twelfth) in addition to being a domicile. If the State Quota has a nexus or connection with the residence or domicile, then, that was a justifiable insistence. That was a justifiable departure from the Rule or principle of merit. It could have, therefore, been departed from only so as to be held eligible for admission under the State Quota. A State Quota itself

is permitted and as a departure from the above principle of merit so as to serve the interest of a State. Repeatedly, the Hon'ble Supreme Court has emphasized that there could be peculiar conditions prevailing in the States in this country. Though it is ideal that there should be a single examination and single merit-based admission process, that could not be achieved. The object and purpose was that there should be only one merit and one competition so that students from all over the country compete with each other while seeking admission to professional courses. That would also achieve the principle of merit and excellence in the true sense of the term. The departure was permitted on limited or restricted grounds. The departure is in the nature of an exception and an exception cannot become the rule. In this case, exactly reverse situation has taken place and now the exception or departure from merit is taken as a license to impose such conditions which are oppressive, unreasonable and incapable of being fulfilled by students who are otherwise meritorious. Bearing in mind the high percentile and the success or the rank in NEET, such stipulations deprives a candidate from a seat within the State and he has to necessarily compete with the limited percentage of seats (15%) of the All India Quota. For all

these reasons, it is submitted that this writ petition be allowed.

47           These arguments of Mr. Thorat and Ms. Thorat are adopted in more or less similar terms by other counsel. Ms. Pradnya Talekar appearing in the writ petitions filed before the Aurangabad Bench and the intervention applications in the petitions filed at Bombay would urge, on identical lines, that Article 14 of the Constitution guarantees equality before law and equal protection of law. No rule or no stipulation of this nature is immune from challenge on the ground of violation of the mandate of Article 14 of the Constitution of India. That mandate is patently breached in this case. She would bring to our notice several judgments right from the judgment in the case of Dr. Pradeep Jain delivered by the Hon'ble Supreme Court in which it has been categorically held that nothing should be done so as to dilute the merit. Here it is a clear case of dilution of merit. There is an artificial line drawn and with regard to students within the State of Maharashtra. She would submit that in this case, her challenge is restricted to the stipulation or requirement of passing tenth standard examination from within the State of Maharashtra. She would submit that in this case she is

restricting it to the requirement of passing the tenth SSC examination from within the State though she has not given up her challenge or argument that the requirement of passing both examinations would violate the constitutional mandate. However, if the rules determine the class twelfth examination as the qualifying one, then, that is cleared by most of the students from within the State of Maharashtra. It is the earlier tenth examination which has not been cleared in most of the cases. However, almost all candidates are domiciled in the State of Maharashtra and that requirement being satisfied by them, then, there is no warrant in making such a distinction as is now sought to be made by the State Government.

48           She has tendered a compilation and while adopting the contentions of Mr. Thorat and his reliance on several judgments, she would submit that the domicile is acquired by a minor only in the circumstances known to law. In the case of a minor, it is acquired by birth and it partakes the domicile of his/her father. That can be renounced once the domicile by choice is acquired on attaining the age of majority through his conduct. In the case of admissions to medical courses the word domicile is

loosely used to convey the condition of intention to reside permanently in a State. Such a condition to determine intention of permanent residence, if it is imposed with the object of retention of doctors in the State, then, that is held as a justifiable departure from merit. She would submit that we must consider the challenge in the backdrop of the requirement of domicile prescribed by the Rules. Both the conditions, namely, being a domicile and passing of qualifying examination have a nexus with the element of residence or domicile within the State. There could not be a further condition imposed as is done in this case for that would depart from the normal rule and prescription set out in the judgments of the Hon'ble Supreme Court. In exceptional circumstances, the departure from merit is permissible. There is a twin requirement in law which justifies a departure. Those have already been outlined by us while noting the arguments of Mr. Thorat. However, any condition in addition to what is prescribed so as to fulfill the requirement of being a resident within the State would necessarily have to be frowned upon for that is nothing, but a whittling down of merit. She would submit that the condition of domicile as understood in the sense of intention of permanent residence in a State is a wholesome condition considering every

aspect of the matter. She would rely upon a Government Resolution dated 27<sup>th</sup> September, 1950 issued by the Government of Bombay, Political and Services Department. She would submit that this is a comprehensive document enlisting the rules, questionnaire and instructions for the determination of domicile. She would refer to this in details as it contains three parts. Part one is the Rule, part two is a domicile questionnaire and part three contains the instructions. She would submit that Instructions 1 to 9 comprehend everything in relation to a domicile. They encompass everything including the element of education within the State. Thus, there is no independent requirement which can be stipulated and this Government Resolution should be taken as a all pervasive document on domicile. That being a proof of residing in Maharashtra for not less than ten years at the relevant time, strongly supports a claim of being educated within the State. She would submit that the Government Resolution dated 31<sup>st</sup> March, 2012, merely prescribes the current form in which an application for issuance of a domicile certificate has to be granted. However, the nature of the inquiry remains the same. It is on the same lines as indicated in the Government Resolution dated 27<sup>th</sup> September, 1950.

Thereafter, a further sub-classification of persons who have passed SSC examination from within the State defeats the very object of the eligibility conditions in terms of intention of permanent residence and that dilutes merit. It fails to satisfy the test laid down by the Hon'ble Supreme Court on a touchstone of Article 14 of the Constitution of India. An attempt has been made by Ms. Talekar to distinguish the judgments of the Hon'ble Supreme Court already rendered on the point. She would submit that the binding nature of the said judgments, once they have been wrongly understood and applied by the State of Maharashtra in the instant case keeps the challenge still open. It is stated that the claim of the petitioner should be considered in the eighty five per cent seats reserved for State Quota has its source in the principle of equality. Once all the students form a class, the further sub-classification amongst them, namely, domiciled but not educated in tenth and twelfth standards in Maharashtra would mean that though eligible in terms of their rank and standing in the merit list, they would stand excluded for not fulfilling one of the requirement. A major chunk of the seats are completely unavailable for them. They have to necessarily fight for a berth or place in the fifteen per cent All India Quota.

This is also a discrimination and against students who are all belonging to the same State. In such circumstances, she would submit that the requirement that is set out so as to be held eligible to participate in the fifteen per cent Quota round be also applied so that no discrimination is permissible. She would submit and alternatively that the Rule debarring the students who have completed SSC from a school outside the state of Maharashtra was taken to be an onerous condition. It cannot be made applicable retrospectively. In that regard, she relies upon an order passed by this Court's Bench at Aurangabad in Writ Petition No. 8268 of 2017. She would further alternatively submit that without any fetter or restriction or embargo, the respondents have allowed the petitioners to participate in the counselling process and they have been admitted in the allotted colleges. They have paid the necessary fees. Thus, they have acted upon the assurance given by the State and to their detriment. Even the principle of promissory estoppel would come to their aid.

49            In support of the above contentions, Mr. Thorat and Ms. Talekar relied upon the following judgments:

JUDGMENTS RELIED UPON BY MR. THORAT :

- i) (1999) 8 SCC 139 Ahmedabad Municipal Corporation & Anr. vs. Nilaybhai R. Thakore & Anr.
- ii) 2000 SCC Online Bom 359 Rajiv Purshottam Wadhwa vs. State of Maharashtra & Ors.
- iii) Writ Petition No. 8268 of 2017 & other matters, Aalia Kausar Mohammed Shafee vs. State of Maharashtra & Ors.
- iv) (1989) 1 SCC 399 Ashok Chand Singhvi vs. University of Jodhpur & Ors.
- v) (2011) 3 SCC 617 Chowdhury Navin Hemabhai & Ors. vs. State of Gujarat & Ors.
- vi) 1986 (Supp) SCC 740 Rajendra Prasad Mathur vs. Karnataka University & Anr.
- vii) (1987) 4 SCC 537 A Sudha vs. University of Mysore & Anr.
- Viii) (2005) 13 SCC 677 M.A. Salam (II) vs. Principal Secretary, Government of A.P. & Ors.

JUDGMENTS RELIED UPON BY MS. TALEKAR :

- i) (2016) 7 SCC 353 Modern Dental College & Research Center & Ors. vs. State of Madhya Pradesh & Ors.
- ii) Writ Petition No. 5847 of 2018 Shridhar Vishnu Gadekar vs. The State of Maharashtra & Ors.
- iii) (1968) 2 SCR 786 Minor P. Rajendran vs. State of Maharashtra & Ors.
- iv) AIR 1968 SC 1012 Minor A. Peeriakaruppan vs. State of Tamil Nadu.
- v) (1986) 2 SCC 534 Nidamarti Maheshkumar vs. State of Maharashtra & Ors.
- vi) (1972) 1 SCC 660 The State of A.P. vs. U.S.V. Balram etc.

- vii) *(1993) 1 SCC 645 Unni Krishnan vs. State of Andhra Pradesh.*
- viii) *(1997) 10 SCC 549 Bandhua Mukd Moracha vs. Union of India.*
- ix) *Writ Petition No. 5898 of 2010 Rajendra Kamble vs. Government of Maharashtra.*
- x) *(2015)1 SCC CIT vs. Vatika Township Pvt. Ltd.*
- xi) *1993 Mah. L.J. 292 Kush Damodar Jhunjhunwala vs. State of Maharashtra & Ors.*
- xii) *(1992) 4 SCC 477 Navjyoti Coop. Housing Society & Ors. vs. Union of India & Ors.*
- xiii) *AIR 1952 SC 75 State of West Bengal vs. Anwar Ali Sarkar.*
- xiv) *Writ Petition No.8268 of 2017 Aalia Kausar Mohammed Shafee vs. State of Maharashtra.*
- xv) *SLP (C) 19277 of 2017 & Review Application (Civil) 212 of 2017 Ahana Abhijit Deodhar & Ors. v. The State of Maharashtra.*
- xvi) *SLP (C) D25623/2017 The State of Maharashtra vs. Aalia Kausar Mohammed Shafee.*

50            In the lead matter in which the affidavit is filed, we have heard Mr. C.R. Naidu, learned advocate as well. He sought to rely upon the Rules under the Maharashtra Act XXVIII of 2015. It is urged that there is an apparent contradiction in the same and in the Information Brochure. Though an argument has been built upon the competence of the State Government to frame Rules, it is urged by Mr. Naidu that if Article 162 is not the source of the power, then, the only provision from which the power is

derived is to be found in section 28 of Maharashtra Act of 2015 and the Rules framed thereunder. He would submit that they also are not in harmony and insofar as the requirement of passing tenth standard examination from within the State. He would, therefore, while adopting the arguments of the other counsel, rely on this position as well.

51           The other petitioners' advocates have more or less adopted above line of argument and we need not, therefore, specifically set out the same.

52           On behalf of the respondents, the learned Advocate General submitted that the challenge raised in these petitions has been considered on several occasions by this Court. He would submit that the same is raised repeatedly only to cause chaos and confusion. None of the arguments that have been canvassed can be termed as a novel proposition. Each one of them have been considered and repeatedly turned down by either the Hon'ble Supreme Court or this Court or other High Courts. The consistent view is that a stipulation of the nature made by the State of Maharashtra in the current rules or in the rules for the current

academic session 2018-19 has been held to be valid. He would heavily rely upon the judgment of the Hon'ble Supreme Court in the case of Anant Madaan (supra) to urge that an identical rule / regulation / clause which required passing of examinations coupled with domicile so as to be held eligible for admission are upheld. He would submit that without or with the requirement of domicile the requirement of passing one of the examination has also been upheld by this Court and he has tendered a compilation of judgments in that regard. The learned Advocate General would submit that there is nothing new in this challenge and we must follow the binding precedents and dismiss these petitions.

53           As far as the alternate argument is concerned, the Advocate General fairly stated that the fault lies entirely with the State. It is the State Government's mistake which led the students to believe that in the current academic year, despite such pre-conditions, as are now challenged and impugned, they can secure admission. It may be an impression given by one of the officials of the State, but once the petitioners know the legal position throughout, namely, rejection of the challenge to the Rules, then, it does not lie in their mouth to say that they are

innocent or victims of uncertainty. Thus, they cannot play the victim card. Each of the students and their parents were aware that in the State of Maharashtra for securing admission under the eighty five per cent State Quota, they have to be domiciled in the State of Maharashtra and must pass the tenth and twelfth standard examination from an Institution within the State of Maharashtra. Despite knowing that position, they proceeded to take admissions in the State Quota and may be relying on a notice issued by the third respondent. However, the lack of coordination, if any, between the State Departments or Cells would not confer a right on the petitioners to secure admissions to the undergraduate courses in the State of Maharashtra for which they otherwise are ineligible. The learned Advocate General, with the assistance of some charts and statistics, would submit that even the minuscule number of students who have taken admission and claim to have paid the fees or reported to the college, were aware of the pendency of the petitions and the challenge. In the circumstances, neither the principle of legitimate expectation nor promissory estoppel nor the broad considerations of equity, justice and fair play would come to their aid. The law is plainly against them and must be implemented at

any cost. It is also to protect the interest of the State that the law must be upheld.

54           Mr. M.M. Vashi, learned senior counsel appearing for some of the intervenors, supporting the State Government, would urge that this Court should not show any mercy to students who are throughout aware of the requirement. They, as also their predecessors, who are now either undergraduates or doctors, were aware from 1997 at least that there are stipulations in place in the State of Maharashtra and if you satisfy these stipulations and requirements, only then you are eligible for admission to the Health Science Courses and not otherwise. Now, on grounds of sympathy or equity they cannot claim a relief contrary to law. Therefore, for the protection of the students who fulfill both requirements from within the State and are awaiting the fruits of their efforts and their ranking in the merit, the petitions should be dismissed. Even the alternate relief sought should not be granted.

55           For properly appreciating these contentions, we have to first refer to the leading judgment of the Hon'ble Supreme

Court in the case of *Dr. Pradeep Jain & Ors. vs. Union of India & Ors.* reported in (1984) 3 SCC 654. The group of petitions before the Hon'ble Supreme Court raised a challenge to the requirement of domicile. In other words, whether the policy of sons of the soil and whether reserving seats on the basis of residence or place of birth would result in a discrimination while seeking admission to a medical college. The Hon'ble Supreme Court was considering a very wide challenge. The argument was that almost all seats prescribe residence requirement for admission to medical college. It is summarized by saying that the candidate must have a domicile in the State. The Hon'ble Supreme Court frowned upon the use of the word 'domicile'. Then, enlisting this principle and the contours of the same, the Hon'ble Supreme Court in paragraph 9 observed that Pradeep Jain is seeking admission to MDS course in King George's Medical College Lucknow affiliated to the Lucknow University. There were provisional admissions granted. However, the petitions challenging constitutional validity of residential requirement and institutional preference in regard to medical colleges in the States of Karnataka and Uttar Pradesh and the Union Territory of Delhi were placed together with the civil appeals. The consistent practice adopted by all the

States was, therefore, put in issue. The principal contention was that residential requirement or institutional preference in admissions to technical and medical colleges is constitutionally impermissible. That does not stand the test of Article 14 and falls foul of its mandate. They ought to be, therefore, struck down. While noting this issue, the Hon'ble Supreme Court, in paragraph 9 observed that it is for admission to MBBS course, domicile or permanent residence is required. In some States residence for a specified number of years ranging from three to twenty years is required while in some other States and in a few States the requirement is that the candidate should have studied in an educational Institution in the State for a continuous period varying from four to ten years or the candidate should be a *bona fide* resident of one State and in case of admissions to M.D.S. course in Uttar Pradesh, the candidate should be either a citizen of India, domicile of whose father is in Uttar Pradesh and who himself is domiciled in Uttar Pradesh or a citizen of India, domicile of whose father may not be in Uttar Pradesh, but who himself has been resided in Uttar Pradesh for not less than five years at the time of making the application and so far as admissions to M.D.S. course in Karnataka are concerned, the

candidate should have studied for at least five years in an educational institution in the State of Karnataka prior to his joining B.D.S. course. The Hon'ble Supreme Court then referred to its judgment in the case of *Jagdish Saran vs. Union of India* reported in (1980) 2 SCR 831. After referring to it, in paragraph 10, the Hon'ble Supreme Court held that the primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The publication of any Rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students. This was the consideration which weighed with the Court even when it rendered its earlier decision, namely, in the case of *Minor P. Rajendran vs. State of Madras* reported in AIR 1968 SC 801 and *A. Peeriakaruppan vs. State of Tamil Nadu* reported in AIR 1971 SC 2303. The Hon'ble Supreme Court then said that while it is true that merit cannot be measured in terms of marks alone, but human sympathies are equally important while determining merit for selection of candidates for admission to medical colleges though it is not easy, one factor cannot be left out of consideration. That factor is then referred in paragraph 13 and departure on justifiable grounds from the principle of

selection based on merit is then discussed. The Hon'ble Supreme Court held that the scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit where it is necessary to do so for the purpose of bringing about real equality or opportunity between those who are unequals. Thus, the considerations which appear to have weighed with the Hon'ble Supreme Court in justifying this departure is first the interest of the State and the other is a region's claim of backwardness. The legitimacy of the claim of State interest was recognised in the earliest decision in the case of *D.P. Joshi vs State of Madhya Bharat* (supra). After referring to all these judgments, eventually the Hon'ble Supreme Court held that if such Rules, as are framed, consisting of residential requirement within the State have an object and that is to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of that State. The State, therefore, has to formulate with reasonable foresight a just scheme with adequate means of livelihood, but to provide the much needed medical aid to the people and to improve public health generally. With this aim and object in mind, the Hon'ble Supreme Court concluded

that there could be a departure from the rule of merit and that principle or rule can be relaxed so as to protect the interest of the State. Thereafter the principle of regional backwardness has been discussed and in paragraph 19, the Hon'ble Supreme Court concludes as under :

*“19. It will be noticed from the above discussion that though intra-state discrimination between persons resident in different districts or regions of a State has by an large been frowned upon by the court and struck down as invalid as in Minor P. Rajendran's case and Perukaruppan's case, the Court has in D.N. Chanchalla's case and other similar cases up-held institutional reservation effected through university wise distribution of seats for admission to medical colleges. The Court has also by its decisions in D.P. Joshi's case and N. Vasundhara's case sustained the constitutional validity of reservation based on residence within a State for the purpose of admission to medical college. These decisions which all relate to admission to MBBS course are binding upon us and it is therefore not possible for us to hold, in the face of these decisions, that residence requirement in at State for admission to MBBS course is irrational and irrelevant and cannot be introduced as a condition for admission without violating the mandate of equality of opportunity contained in Article 14. We must proceed on the basis that at least so far as admission to MBBS course is concerned, residence requirement in a State can be*

*introduced as a condition for admission to the MBBS course. It is of course true that the Medical Education Review Committee established by the Government of India has in its report recommended after taking into account all relevant considerations, that the "final objective should be to ensure that all admissions to the MBBS course should be open to candidates on an All India basis without the imposition of existing domiciliary condition," but having regard to the practical difficulties of transition to the stage where admissions to MBBS course in all medical colleges would be on all India basis, the medical Education Review Committee has suggested "that to begin with not less than 25 per cent seats in each institution may be open to candidates on all India basis." We are not all sure whether at the present stage it would be consistent with the mandate of equality in its broader dynamic sense to provide that admissions to the MBBS course in all medical colleges in the country should be on all India basis. 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, It would be constitutionally

*permissible to provide, as an interim measure until we reach the stage when we can consistently with the broad mandate of the rule of equality in the larger sense; ensure admissions to the MBBS course on the basis of national entrance examination an ideal which we must increasingly strive to reach for reservation of a certain percentage of seats in the medical colleges for students satisfying a prescribed residence requirement as also for students who have passed PUC or pre-medical examination or any other qualifying examination held by the university or the State and for this purpose it should make no difference whether the qualifying examination is conducted by the State Board or by the Central Board of Secondary Education, because no discrimination can be made between schools affiliated can be made between schools affiliated to the Central Board of Secondary Education. We may point out that at the close of the arguments we asked the learned Attorney General to inform the court as to what was the stand of the Government of India in the matter of such reservation and the learned Attorney General in response to the inquiry made by the Court filed a policy statement which contained the following formulation of the policy of the Government of India:*

*"Central Government is generally opposed to the principle of reservation based on domicile or residence for admission to institution of higher education, whether professional or otherwise. In view of the territorially articulated nature of the system of institutions of higher learning*

*including institutions of professional education, there is no objection, however, to stipulating reservation or preference for a reasonable quantum in under-graduate courses for students hailing from the school system of educational hinterland of the institutions. For this purpose, there should be no distinction between schools affiliated to CBSC."*

*We are glad to find that the policy of the Government of India in the matter of reservation based on residence requirement and institutional preference accords with the view taken by us in that behalf. We may point out that even if at some stage it is decided to regulate admissions to the M.B.B.S. course on the basis of All India Entrance Examination, some provision would have to be made for allocation of seats amongst the selected candidates on the basis of residence or institutional affiliation so as to take into account the aforementioned factors."*

56           This and the subsequent paragraph has been heavily relied upon by the petitioners' counsel to urge that there is an extent to which the residential requirement can be prescribed and equally institutional preference. This cannot completely exclude admissions of students from other Universities and States on the basis of merit which is on open competition.

However, in subsequent paragraphs, the State Government's difficulties are noted and then the percentage carved out. It is not disputed before us that the percentage today is eighty five per cent seats from within the State and fifteen percent on All India basis. This is how the seats have to be filled in. However, we find that assuming that everything has a correlation or nexus with the requirement of residence or domicile, additional stipulation being set out would not necessarily violate the mandate of Article 14 of the Constitution of India. Whether the conditions as are found in the impugned Rules are in addition to what has been prescribed as a residential or domicile requirement or could be viewed independent thereof assuming they have a close connection with the requirement of domicile or residence. We have enough material on record to hold that there is a definite nexus with the object sought to be achieved.

57           In two decisions of the Hon'ble Supreme Court, at least, following *Pradeep Jain*, this principle is set out. We are doing nothing, but abiding by these binding precedents. In the case of *Anant Madaan vs. State of Haryana (1995) 2 SCC 135*, the Hon'ble Supreme Court was considering a case of admission to

medical and dental colleges in the State of Haryana. The eligibility criteria prescribed for the year 1994 for the Entrance Test to be conducted for the State of Haryana for an admission to these courses required the candidate to be a resident / domiciled in the State of Haryana. Till 1993, he was required to produce a certificate of Haryana domicile / residence as prescribed in those Rules. In 1994, the eligibility conditions were changed. The eligibility conditions, *inter alia*, for 1994, required the candidate to study 10, 10+1 and 10+2 classes as regular candidate in recognized Institutions in Haryana and a corrigendum was issued granting eligibility to children / wards of employees belonging to Haryana who had studied 10, 10+1 and 10+2 as regular candidates in recognised Institutions in Chandigarh subject to their fulfillment of other eligibility conditions and further providing that they should submit a certificate of Haryana domicile alongwith an affidavit by the parent / guardian that the candidate has not appeared or was not appearing at the Entrance Test of any State or Union Territory other than Haryana. An attempt has been made in the cases before us to distinguish these facts in Anant Madaan by urging that the condition was of study of 10, 10+1 and 10+2 classes as regular candidates in recognised

Institutions in the State of Haryana, whereas before us the conditions are not identically worded or are not in such rigorous terms.

58           Be that as it may, challenge was laid to these eligibility conditions and insofar as the requirement of studies for tenth, eleventh and twelfth as regular candidates in an Institution in the State of Haryana, the corrigendum was also challenged. The Division Bench of the High Court differed in its views and the matter was then referred to a third Judge. The third Judge concurred with the view of a Judge upholding this criteria. That is how *Anant Madaan* and others approached the Hon'ble Supreme Court. They argued that this condition is arbitrary and discriminatory because it excludes children of parents who may be residents of Haryana or who may be domiciled in Haryana, but who may have sent their children to schools or colleges outside Haryana for a variety of reasons. In dealing with such a challenge and thereafter refuting it, this is what the Hon'ble Supreme Court held :

*“8   In view of the above facts, we have to consider whether the condition requiring a candidate to have*

*studied in 10th, 10+1 and 10+2 classes in a recognised institution in the State of Haryana, can be considered as arbitrary or unreasonable. It is by now well settled that preference in admissions on the basis of residence, as well as institutional preference is permissible so long as there is no total reservation on the basis of residential or institutional preference. As far back as in 1955, in the case of D.R. Joshi v. State of Madhya Bharat, this Court making a distinction between the place of birth and residence, upheld a preference on the basis of residence in educational institutions.*

9     *In the case of Jagdish Saran vs. Union of India this Court reiterated that regional preference or preference on the ground of residence in granting admission to medical colleges was not arbitrary or unreasonable so long as it was not a wholesale reservation on this basis. This Court referred to various reasons why such preference may be required. For example, the residents of a particular region may have very limited opportunities for technical education while the region may require such technically qualified persons. Candidates who were residents of that region were more likely to remain in the region and serve their region if they were preferred for admission to technical institutions in the State, particularly medical colleges. A State which was short of medical personnel would be justified in giving preference to its own residents in medical colleges as these residents, after qualifying as doctors, were more likely to remain in the State and give their services to their State. The Court also observed that*

*in the case of women students, regional or residential preference may be justified as their parents may not be willing to send them outside the State for medical education. We, however, need not examine the various reasons which have impelled this Court to uphold residential or institutional preference for admission to medical colleges. The question is settled by the decision of this Court in Pradeep Jain vs. Union of India. This Court has observed in that judgment:*

*"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 1 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....."*

*This Court held in that case that reservation to the extent of 70% on this basis would be permissible. This percentage of reservation was subsequently increased to 85% by this Court in the case of Dinesh Kumar vs. Motilal Nehru Medical College. This Court in that case directed an entrance examination on an all-India basis for the remaining 15% of seats.*

10     *In the present case, the reservation which has been made on the basis of candidates having studied for the preceding three years in recognised schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an all-India basis. This eligibility criterion, therefore, is in conformity with the decisions of this Court referred to above. It cannot, therefore, be considered as arbitrary or unreasonable or violative of Article 14 of the Constitution.*

11     *The appellants drew our attention to a decision of this Court in Meenakshi Malik vs. University of Delhi where the father of the candidate was in government service. He was posted by the Government outside India. As the parents were compelled to go outside India, the children were also required to go with their parents. This Court considered this as a hard case. It held that the qualifying condition that the candidate should have received the last two years of education in a school in Delhi, should be relaxed in that case as the candidate was compelled to leave India for a foreign country by reason of the posting of her parents by the Government*

12             ... ..

13     *The appellants have also cited before us some judgments of the High Courts. We need not, however, examine them since the matter is concluded by the above decisions of this Court. The eligibility condition, therefore,*

*which requires that the candidate should have studied 10th, 10+1 and 10+2 classes from a recognised institution in the State of Haryana is neither 4 arbitrary nor unreasonable and the Punjab and Haryana High Court has rightly upheld the same.”*

59           As observed above, an attempt is made to distinguish this judgment by assigning two reasons. Firstly that when this judgment was delivered, the mandate of Pradeep Jain was not carried as further or ahead as now. Now, the mandate is carried to the extent of holding a National Eligibility-cum-Entrance Test. That is a single test. The ranking in order of merit in that test is, therefore, the sole criteria. Merely because Dr. Pradeep Jain's case was not departed from to the extent that the States were permitted to carve out a Quota for themselves to subserve their interest, does not enable prescribing such conditions as would dilute or whittle down the merit. The other argument is that the Rules themselves make a distinction between tenth and twelfth standard examination and term the twelfth standard examination as the qualifying examination. The requirement of passing that examination can be understood and may have been upheld, but there is no consistency insofar as the requirement of

passing tenth standard examination from within the State. That definitely has no nexus with the object sought to be achieved.

60           We are unable to accept this contention for more than one reason. In the NEET Rules, styled as NEET Brochure and which is placed on record in all cases, it is evident that the introduction starts with the MCI Regulations. It is stated that common counselling is now a requirement added. It says that there shall be a common counselling for admission to MBBS courses in all medical Institutions on the basis of merit list of the NEET. The Designated Authority for counselling for 2015 All India Quota seats of the contributing States shall be the Directorate General of Health Services (DGHS). The counselling for admissions to MBBS course in all Medical Educational Institutions in a State / Union Territory including Medical, Educational Institutions established by the Central Government, State Government, University, Deemed University etc. shall be conducted by the State / Union Territory Government. Such common counselling shall be under the overall superintendence, direction and control of the State/Union Territory. It is in these circumstances that for filling up the seats in the State Quota of

eighty five per cent, that the State Government made the said Rules or the information document.

61           It contains the relevant definitions which we have reproduced above. The important one being of the term 'courses' as found in clause 3(e). It is the undergraduate medical courses or undergraduate dental courses, as the case may be, conducted in the State as per the approval of the MCI and DCI and affiliated to MUHS. The admission is, therefore, to these courses. The basis for these admissions is the merit and that merit is to be reckoned with reference to the performance in the NEET and the ranking therein. That order in which the candidate is ranked in merit is no way diluted or altered. Based on the NEET results and this merit list, the Quota or percentage of seats is filled in by the respective State Governments, in the common counselling or admission process and that is always understood to be a distinct exercise and permissible to be carried out by the State Government / Union Territories. With regard to this exercise, Rules and Regulations can be made.

62           It has always been held that these Rules and Regulations, though not strictly referable to any legislation like the Maharashtra Act XXVIII of 2015, are nonetheless referable to the Executive power of a State which is to be found in Article 162 of the Constitution of India. That is on par with the power to make laws and in relation to the subjects or fields in which the State is empowered to make laws. There is a proviso, but we do not see any force in the contentions of Ms. Talekar that with this proviso in place, if any Rules of the nature made with the stipulation as are impugned would run counter to the principle of merit and which is carved out with reference to such legislations as are squarely referable to Schedule VII List I styled as the Union List. We do not see how when the process is defined, demarcated and clearly segregated in the above manner, can we hold that the State Government is denuded of any power to make the Regulations or Rules as are found in place. We may at once clarify that we are most unhappy with the manner in which the Maharashtra Government proceeds for though the Department styled as Department of Medical Education and Research through its Directorate is in place or there is a separate Directorate, a gentleman styled himself as Commissioner CET Cell puts in

something like an Information Brochure on the website and publishes it as if it is an advertisement. There is a sanctity attached to everything, including this common counselling and common admission process. This Commissioner is not a law unto himself. He may style himself as a competent authority, but we do not see how when the State Government itself speaks on more occasion than one, through the above Directorate and, in fact, has spoken as late as on 13<sup>th</sup> April, 2017, can this gentleman assume that he is everything in relation to this process and it is exclusively his control, monitoring and superintendence which would govern the conduct of admissions. We would highly appreciate that hereafter this gentleman is not put in charge of issuing such Brochures and when the State Government in exercise of its rule making powers takes recourse to substantive provisions contained in section 23 of the Maharashtra Act XXVIII of 2015. It has very clearly spoken and by issuing the Government Resolution traceable to Article 162 of the Constitution of India dated 13<sup>th</sup> April, 2017, stating that the rules in place for private institutions in terms of Maharashtra Act XXVIII of 2015 and particularly section 23 thereof would apply also for filling in the seats in the State run or Municipal

Corporation controlled medical colleges. We would highly appreciate that the Director of Medical Education and Research alone publishes the rules or any amendments thereto and takes full responsibility in the event of there being any dispute raised with regard to their interpretation. He has always been put forward to support the State action and it is the affidavit filed on behalf of the Directorate as also the State Government based on which the arguments of the State are canvassed and its stand is spelled out. He cannot, therefore, be excluded, much less ignored in the whole process. There is one more reason why we say so because when parallel authority seeks to exercise the powers or enforce the rules, inevitably there is confusion and chaos. The best illustration or example is the academic session 2018-19.

63 We do not know how and on what basis the attention of this Court at its Nagpur Bench was invited to only few rules and not the complete set. We have, therefore, before us a version of the Director of Medical Education and Research. He has filed an affidavit on behalf of the respondent Nos.1 and 2 and together. They are not endorsing the stand of the third respondent and stated to be adopted before the Nagpur Bench of this Court. In

fact, it is stated that the Information Brochure is released by the Commissioner. It is he apparently who instructed the learned Assistant Government Pleader at Nagpur to make a concession, but now everything that he did is disowned by the respondent Nos.1 and 2. The Director has remained present in this Court after we directed that his presence be secured though he was busy at that time in the Legislative Assembly Session at Nagpur. It is the Director who flew to Mumbai, remained present in this Court and instructed the Assistant Government Pleader appearing in these petitions not to endorse the stand of the third respondent which was adopted before the Nagpur Bench of this Court. It is in these circumstances that we are constrained to observe that there is complete lack of coordination and possibly the respondent Nos.1 and 2 feel helpless when the respondent No.3 goes ahead and on his own makes a statement based on which a concession on law is given before this Court. In the circumstances, it is entirely the working and functioning of the Directorate and the third respondent-Commissioner which has resulted in filing of these petitions. The detailed and lengthy arguments necessitating a judgment reiterating the earlier conclusions is but a outcome of this lack of coordination. This

could have been avoided. We are informed in the presence of the Secretary in the Department of Medical Education and Research that he was unaware of these developments. We hope and trust that now at least there would be a improvement and such incidents do not occur in future. Let the Secretary take the entire responsibility and he must monitor the working of the Directorate and supervise it. Equally, if a Cell is created, we do not know what legal status can be claimed by this Cell. It is an unusual sight or scenario in that for this Commissioner of the Common Entrance Test Cell the Additional and Assistant Government Pleaders on the Original Side and Appellate Side of this Court are not appearing nor are engaged to appear on his behalf. He has a panel of advocates, independent of the State Government and the Directorate of Medical Education and Research. Surely, he cannot take so much liberty and it is now for the Secretary to set right these things and remind all concerned that he has a firm grip on every such matter which concerns the welfare and interest of the State and equally that of the students. The student community should not be left guessing nor they must suffer because of lack of coordination and cooperation amongst various Departments in the State. In such circumstances, we

leave the matter here and say nothing more.

64           Now we turn to the main question and that is whether these clauses can even now be examined for their legality and validity and can the challenge be at all considered again and again. We feel that the arrangement of the clauses in the Brochure is indicative of how they have been understood for all these years and decades. For the present academic session, the placement of the clauses is after the definitions. The title to the clauses itself clarifies that it is Eligibility for admission to “Health Science Degree Courses”. Clause 4.1 says that the candidate must be an Indian National. An exception is carved out for a Non-Resident Indian and he will be eligible only on All India basis in private unaided college in NRI Quota. Clause 4.1.1 deals with Indian Citizens. Overseas citizen of India candidate will be also eligible for Government/Corporation/Government Aided/Private Unaided College for academic year 2018-19 and 2019-20 only. In this case also, clause 4.1.2 says that such candidate should have passed their tenth and twelfth standard examination from the State of Maharashtra and should be domicile of Maharashtra or stay in Maharashtra for a minimum period of ten years. Then

clause 4.1.3 deals with the eligibility of the NRI candidate. Clause 4.2 says that the candidates must be domicile of Maharashtra (except candidates under clause 4.1.3, 4.7, 4.8 and Annexure C and E). Then, the date of birth is prescribed and birth certificate would have to be produced together with other proof and they will constitute an evidence of age. Then the medical fitness is necessary and such a certificate ought to be produced at the time of document verification as per proforma. The candidate must have passed the SSC or equivalent examination from an Institution situate in the State of Maharashtra and the attention of the candidate is invited to clauses 4.7 and 4.8, Annexure C and E for exception. Then, clause 4.6 follows which says that the candidate must have passed the qualifying examination i.e. HSC twelfth standard or equivalent examination in the State of Maharashtra. Then again clause 4.7, 4.8, Annexure C and E are referred to as an exception from the rigour of this clause. Even the subjects have been set out and the subjects for which this examination of twelfth standard should have been attempted and cleared are mentioned. Then clause 4.6.1 prescribes eligibility criteria for qualifying examination for various courses. The clause continues an exception for SSC and HSC twelfth or

equivalent examination. That is set out in clause 4.7 and that encompasses categories of employees of the Government of Maharashtra or its undertaking and children of whom will be relieved of the condition and the circumstances in which they can be relieved. Thus, this is a conditional relief. It is an exception.

65           We do not see how any eligibility for admission to Health Science degree courses as has been prescribed by this clause cannot be prescribed in law. Can we then ignore all these sub-clauses and the stipulations therein ? Each one of them would have to be read together and harmoniously. While they outline the condition of residence and domicile in the State of Maharashtra in clause 4.1.2, even an overseas citizen of India candidate will be eligible provided he has passed the tenth and twelfth standard examination from the State of Maharashtra and is a domicile of Maharashtra or staying in Maharashtra for a minimum period of ten years. Thus, merely because a condition by which the candidate is required to be a domicile of Maharashtra is set out separately and the other two conditions with regard to passing of SSC or equivalent and HSC / qualifying examination or equivalent with the subjects set out therein have

been distinctly inserted, that we can conclude that they have absolutely no nexus or relation with the object sought to be achieved. Eventually, the object sought to be achieved is that a candidate, domiciled in the State of Maharashtra and fulfilling the requirement of educational qualifications required for admission to the degree course, obtained within the State of Maharashtra, alone is eligible. This condition can be prescribed either together with the domicile or separately. Once it is so prescribed to hold that there is no nexus at all or it has no relation with the object sought to be achieved would not be proper. If there is a departure from the rule of merit permissible in terms of the Hon'ble Supreme Court verdict itself on two grounds, one of which is the interest of the State, then, to safeguard and protect it, such condition has been inserted. It cannot be termed as superfluous or ignored totally for mere domicile may not justify earmarking of eighty five per cent seats for the State of Maharashtra. If the State of Maharashtra is held to be entitled to fill in these eighty five per cent seats by students residing within its limits and for protecting its interest and achieving the larger cause of obtaining doctors for public health facilities and caring, then, all the more, the argument of the counsel appearing for the petitioners on the

point of nexus cannot be accepted. If there was ever any doubt even that stands cleared by clauses 4.17 and 4.18 of the Brochure, which reads as under :

*“4.17 All those candidates who have passed the SSC. (Std. X) and/or H.S.C. (Std. XII) or equivalent examination/s from an institution/s situated outside the State of Maharashtra and not Domicile of Maharashtra are not ELIGIBLE for admission to Health Science courses except, those exempted under Rule 4.7, 4/8, Defence & MKB and NRI quota (41.2) in private unaided college.*

*4.18 Admission to Health Science Courses is subejct to the grant of eligibility by Maharashtra University of Health Science, Nashik.”*

66 It is common ground that Article 14 permits reasonable classification. It forbids class legislation, but permits classification within reasonable limits. The classification so made, if questioned, must be established to have a nexus with the object sought to be achieved. There ought to be a rationale and reasonableness behind inserting such provisions as are to be found in the clauses and sub-clauses. While defining and outlining eligibility for admission and bearing in mind the larger objective of the interest of the State, if these conditions pertaining to

educational qualifications being acquired within the State are inserted, then, they are not falling foul of the constitutional mandate. We can safely reach this conclusion based on the judgments of the Hon'ble Supreme Court and the principles enshrined therein.

67            Even in the case of admissions from common pool or common categories for a student who is a resident of a particular State, such conditions have been inserted. In the case of *Mohan Bir Singh Chawla vs Punjab University, Chandigarh & Anr.* reported in *AIR 1997 SC 788*, following the dictum in the Haryana case referred supra, the Hon'ble Supreme Court upheld the action of the State in giving some weightage or granting a percentage of marks over and above the marks which have been assigned in the qualifying examination to local students. In the sense, when the Punjab University was holding an examination for making admissions to the LLB degree course in the State of Punjab, the Rules did not prohibit students from other Universities or other States from participating in that admission process. However, in the qualifying examination for that course, which was prescribed, successful candidates from the State of

Punjab were given additional marks or weightage over and above the other students. That was challenged before the High Court and unsuccessfully before the Hon'ble Supreme Court. The judgment, which has been delivered by a Bench presided over by the same Judge, His Lordship B.P. Jeevan Reddy who was presiding the Bench delivering the verdict in Anant Madaan, had this to say while upholding this weightage :

*“11 In Anant Madaan v. State of Haryana (1995) 2 SCC 135 :(1995 AIR SCW 914), decided by a Bench of two Judges including, one of us (B.P. Jeevan Reddy, J.), the challenge was to a rule made by the Government of Haryana providing that in matter of admission to M.B.B.S./B.D.S. courses, eighty five percent of the seats shall be reserved for candidates who have studied 10th, 11th and 12th examinations from schools/colleges outside the State of Haryana but whose parents were either residing in or domiciled in the State of Haryana. The challenge to the rule was repelled following the decision of the Constitution Bench of this Court in D.P. Joshi v. State of Madhya Bharat (1955) 1 S.C.R.1215 : (AIR 1955 SC 334) and the decisions in Jagdish Saran (AIR 1980 SC 820), Dr. Pradeep Jain (AIR 1984 SC 1420) and Dinesh Kumar (AIR 1986 SC 1877). The impugned rule was, however, treated as a rule providing preference on the ground of domicile/residence.*

12. *Sanjay Ahlawat v. Maharishi Dayanand University, Rohtak (1995) 2 S.C.C. 762 : (1995 AIR SCW 228)* was again a case from the State of Haryana. The decision was rendered by a Bench of two Judges, including one of us (B.P. Jeevan Reddy, J.) The challenge was to the rule providing that in the matter of admission to post-graduate medical courses, preference be given to local candidates by adding ten extra marks, i.e., to students passing the M.B.B.S. examination from the Rohtak Medical College. The rule further provided that students who are residents or domiciled in the State of Haryana but who have passed their M.B.B.S. examination from a medical college outside the State of Haryana shall be added five marks. The validity of the rule was sustained observing that it was not a case of college-wise, or for that matter university-wise, reservation but it is a rule providing for preference on the basis of domicile. It was held on the basis of facts and figures furnished by the State that the said rule did not have the effect of shutting the doors of admission to students passing their M.B.B.S. course from other medical colleges than the Rohtak Medical College, which was said to be the only medical college in the State of Haryana. It was shown to the Court that outside students also got admission in reasonable numbers. The Court accepted the explanation furnished by the State that extra marks were awarded to graduates of the Rohtak College to ensure that medical facilities in the State are not impaired because of dearth of doctors. The Court accepted the explanation that residents of Haryana will, by and large, remain in Haryana after obtaining medical degrees and

*that their services will be available to the people of the State. In view of these circumstances, the rule was held to be not violative of Articles 14 and 15 of the Constitution.*

13           *Lastly, we may refer to a three-Judge Bench decision in Gujarat University v. Rajiv Gopinath Bhatt (1996) 4 S.C.C. 60 : (1996 AIR SCW 2483). The Gujarat University invited applications for admission to two super-speciality courses, D.M. and M.C.H., the admission whereto was to be made based upon the marks obtained at the entrance examination conducted by the university. Because of the small number of seats available in the said courses, the rule provided that "first preference will be given to candidates from Gujarat University. Second preference will be given to candidates from other universities of Gujarat State. Any vacancy remaining after this shall remain unfilled". By the time, the appeal came up for hearing before this Court, the appeal had become infructuous as noticed in Para 4 of the Judgment, inasmuch as the respondent was allowed to join the course and had also completed the course by that date. In that view of the matter, the Court was of the opinion that it is not actually required to examine the grievance made on behalf of the appellant-university against the judgment of the High Court which had struck down the rule. Even so, at the instance of the counsel for the university, the court examined the validity of the rule. The High Court had relied upon the decision of this Court in Jagdish Saran (air 1980 SC 820) and Dr. Pradeep Jain (AAIR 1984 SC 1420) for invalidating the rule. This Court, however, sustained*

*the rule, except the last sentence therein, on the following reasoning (at p. 2484 Para5 of AIR) :*

*"Without examining that question in detail, it may be pointed out that the aforesaid judgments (Jagdish Saran and Pradeep Jain) were not in connection with the admission in super-speciality course. At the same time, we reiterate that object of any institution while selecting applicants for admission is select the best amongst the applicants, regional and other considerations which do not satisfy the test of Art. 14 of the Constitution should not affect the merit criteria. But from time to time, this court taking into consideration the local and regional compulsion have been making efforts to strike a balance so that the students who have pursued the studies in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when question of their admission in super seats are limited in number."*

*After referring to certain observations in Dr. Pradeep Jain and Anant Madaan, the Court observed, "(T)herefore if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super speciality courses to the students of the University in question, per se it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution."*

14 *From the decided cases, following principles emerge:*

*(a) College-wise preference is not permissible in any event.*

*(b) University-wise preference is permissible provided it is relevant and reasonable. Seventy to eighty percent reservation has been sustained, even where students from different universities appear at a common entrance test. the trend, however, is towards reducing the reservations and providing greater weight to merit. The practice all over the country today, as a result of the decisions of this Court, is to make fifteen percent of the seats in M.B.B.S. course and twenty five percent of the seats in post-graduate medical courses in all the Government medical colleges in the country [except Andhra Pradesh and Jammu & Kashmir] available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an All-India test conducted by the designated authority.*

*(c) The rule of preference on the basis of domicile/requirement of residence is not bad provided it is within reasonable limits, i.e., it does not result in reserving more than eighty five percent seats in graduate courses and more than seventy five percent seats in post- graduate courses. But district-wise reservations are an anathema.*

*(d) Where the students from different universities appear at a common entrance test/examination [on the basis of*

*which admissions are made] the rule of university-wise preference too must shed some of its relevance. The explanation of difference in evaluation, standard of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State governments [which have established and maintained these institutions] to regulate the process of admission and their desire to provide for their own students should also be accorded due deference.*

*(e) The fair and proper rule is: the higher you go, in any discipline, lesser should be the reservations - of whatever kind. It is for this reason that it was said in Dr.Pradeep Jain that there should be no reservations in the matter of admission to super-specialities, though in the recent decision in Rajiv Gopinath Bhatt, a different view appears to have been taken while affirming the principle of merit, at the same time. In the larger interest of the nation, it is dangerous to depreciate merit and excellence in any field."*

68           We have been noticing that in this Court as well, such a provision was challenged and repeatedly. In fact, the learned Advocate General was right in relying on the order passed by a Division Bench of this Court in Writ Petition No.6065 of 2013 decided on 15<sup>th</sup> July, 2013 (*Smt. Surbhi Suresh Joshi vs. State of*

*Maharashtra & Anr.*). The grievance of the petitioner in that case was that she was called for counselling by the second respondent, but denied admission in the State Quota. The denial was on virtually the same grounds. The counsel for the petitioners in that case argued that though the petitioner is domiciled in the State of Maharashtra, the qualifying examination was passed by her from the State of Rajasthan. Rule 9.3 at that time dealt with eligibility for the State Quota seats. The argument was that Rule 9.3 does not impose any condition for claiming a seat in the State Quota, the candidate must have passed the qualifying examination from that State. It was argued on the basis of the Notification and Rules published by the State of Maharashtra after the declaration of the result of the Entrance Examination, a condition was imposed by the State that the candidate should have passed his or her tenth and twelfth examination from an Institution which is situate in the State of Maharashtra. No such condition was found in the Rules of the NEET. Reliance was placed on a judgment of the Hon'ble Supreme Court in the case of *Parmender Kumar vs. State of Haryana* reported in (2012) 1 SCC 177. Thus, the argument was that Rules have been framed to the prejudice of the petitioner and subsequent to the commencement

of the process. While dealing with that argument, the Division Bench held that the Rules of NEET do not prescribe eligibility for eighty five per cent State Quota seats and as far as eligibility is concerned, the same will be governed by the State Rules. So much for the competency of the State. Then, it was argued that Rule 12 of the Rules which help the candidate to choose State Code to claim seats under State Quota does not, in any manner, make any reference to any residential criteria of eligibility being fulfilled. Even that argument of the petitioner was turned down and it was conceded before the Division Bench that as far as the State of Maharashtra is concerned, there was always a Rule in force which prohibited candidates, who have not passed the qualifying examination from within the State of Maharashtra, to secure admission in the eighty five per cent State Quota. The Rules, modified by the State in July 2013 insofar as the eligibility criteria is concerned, are the same as earlier years and it was not disputed that as far as the requirement of candidates passing the qualifying examination from within the State is concerned that Rule prevailed and was in force for the last several years. It is in these circumstances that the Division Bench turned down the challenge.

69            In Writ Petition No. 5606 of 2013 decided on 17<sup>th</sup> July, 2013, a Division Bench of this Court at Aurangabad heard a challenge to an identical clause. There, clause 4.1 for the NEET UG-2013 Rules required the candidate to pass the qualifying examination or equivalent from an Institution in the State of Maharashtra with the subjects as above. The argument was that the petitioner before the Court passed tenth standard examination from Cambridge School, Aurangabad and thereafter shifted to Delhi for pursuing studies of eleventh and twelfth from Science stream. The petitioner completed eleventh and twelfth from Delhi and after having successfully passed those examinations, appeared for the NEET on 5<sup>th</sup> May, 2013. An All India rank was secured and based on the ranking in the merit list, the petitioner alleged that she is qualified to seek admission even in the State Quota for she has been a domicile of Maharashtra and completed her tenth standard from the State of Maharashtra. The very same judgments, which have been relied upon before us , were relied upon in support of the arguments of the petitioner and after referring to each one of them and the more recent ones in the case of *Dr. Saurabh Chaudri & Ors. vs. Union of India & Ors.*

(2003) 11 SCC 146 the Division Bench expressed its opinion in paragraph 20 by holding that it is crystal clear that eighty five per cent Quota seats shall be subject to eligibility criteria prevailing in a particular State or Union Territory as notified by the respective States or Union Territories. Then, the Rules of NEET and particularly, Rules 9.3, 11.3 and 16.2 were referred and it was held that there is nothing in these Rules which will prevent or preclude the State Government from proceeding in the manner placed before the Division Bench. The Rule prescribing institutional preference was held to be valid and not offending the guarantee of equality. In the circumstances, that petition stood dismissed.

70            Another Division Bench of this Court in Writ Petition No. 5954 of 2015 decided on 25<sup>th</sup> July, 2014, considered a challenge to the same Rule. The grounds of challenge were identical as also the defence of the State. The Division Bench rejected the argument by concluding in paragraph 12 that the condition of qualifying examination cannot be relaxed. The requirement that the candidate must have passed qualifying examination from the State of Maharashtra in the subjects

referred can, in no way, be said to be arbitrary or reasonable. The percentage of marks of those subject is necessary to decide the merit while selecting or considering the merits of candidates. That could not be said to be not germane or irrelevant, as was sought to be contended, and incapable of being relaxed. There was no material placed to hold that the Rule is violative of the mandate of Article 14 of the Constitution of India.

71           The learned Advocate General then urged that in Writ Petition No.5717 of 2013, a Division Bench presided over by Hon'ble B.P. Dharmadhikari, J. had negatived the challenge to these Rules. That judgment also makes a reference to the decisions of the Hon'ble Supreme Court in the field. Pertinently, it made reference to the judgment in the case of *Mohan Bir Singh Chawla vs. Punjab University, Chandigarh*, the passages of which we have reproduced above and holds that it practically looks into all earlier judgments. The Hon'ble Supreme Court makes reference to all the decided cases and holds that the impugned Rule was, however, treated as a rule providing preference on the ground of domicile / residence. The educational requirement of passing qualifying examination and a prior tenth standard

examination is but an extension or facet of the same. In the circumstances, the challenge was negatived and with the same reasoning.

72           Thus, what we have before us are several orders of this Court consistently passed and holding the field. Our attention was also invited by the learned Advocate General to two judgments of this Court which either in the absence of Rule of domicile or together with it prescribed a criteria of having passed tenth or twelfth standard examination from the State of Maharashtra. Such a Rule was held not to be arbitrary though it was not coupled with or not appearing in the eligibility or qualifying rules together with the domicile. Thus, such conditions imposed in isolation as well have been upheld. That is the basis on which the State ascertains for itself that it is giving admission to a meritorious student, but who has roots in the State or has a connection with the State. True it is that it would have been ideal if the examination and the admission both assume a National character. It would have been integration in the true sense of the term if all students compete with each other wherever they are residing and whichever part of this country they come from.

That would have been ideal situation and that would have really brought about the integration conceptualized by the Hon'ble Supreme Court in the case of *Dr. Pradeep Jain*. However, the Hon'ble Supreme Court desired to achieve true and real equality. It was aware of the ground situation. It was aware of the diversities in the State. It could not have, therefore, ignored them. If States have their own peculiar situations, not just on account of geographical locations, but several other relevant and connected factors and they have to be borne in mind, then, a level playing field must be made available so that the local talent is utilised for protecting and safeguarding the interest of the State. If a particular State is desirous of utilising its talent so as to promote and protect its public health care, then, we do not see how, the Hon'ble Supreme Court allowing such a departure and holding that it is on justifiable ground, can we take a different view.

73            Each of the arguments and noted by us hereinabove may not have been canvassed with the use and aid of same words and expressions and in the same manner. However, the binding effect of a judgment of the Hon'ble Supreme Court cannot be

diluted by holding that some facet of the controversy or some argument in relation to the same has missed the attention of the Judges or was not canvassed before the Judges deciding the matter. By such a specious exercise, we cannot brush aside binding precedents. This is not a path which we can follow for that would mean there will be only inconsistency and confusion without any predictability to judicial decisions. The hallmark of the system is that it should be consistent in its approach. We cannot say that the judgments of this Court are not binding upon us. More so, when it is nobody's argument that they are *per incuriam*. In such circumstances we hold that we are bound by all the earlier judgments of this Court which but follow the judgments of the Hon'ble Supreme Court. We cannot take a different view. [See *Director of Settlements, A.P. & Ors. vs. M.R. Apparao & Anr.*, AIR 2002 SC 1598].

74           All that now remains is the Division Bench judgment of this Court on which heavy reliance has been placed by the petitioners. That was rendered in the case of *Rajiv Pushottam Wadhwa vs. State of Maharashtra & Ors.* In *Rajiv Purshottam*, a Division Bench of this Court considered somewhat similar

challenge, but the background facts would have to be noted. Rule 4.4 was the subject matter of the decision and it provided that the candidate seeking admission to course in Health Sciences for academic year 2000-2001 would be eligible for admission only if he or she has passed SSC examination from an Institution situate in the State of Maharashtra. Rule 4.5 requires, as condition of eligibility, that every candidate must have passed the HSC Certificate or equivalent examination from an Institution situate in the State of Maharashtra. Rule 4.4 was challenged on the ground that the same violates the mandate of Article 14 of the Constitution of India. The Court clarified that passing of qualifying examination from within the State of Maharashtra prescribed in Rule 4.5 was not under consideration. It also held that HSC examination is the qualifying examination for admission to medical courses and the passing of that examination from the State of Maharashtra is thus a valid requirement of eligibility. Wadhwa's case was that his father as well as his mother were born in Maharashtra. After completing SSC in 1983 from Pune Board Wadhwa's father joined the Defence services as a Radar Operator in the Indian Air Force. He served the Indian Air Force until 26<sup>th</sup> June, 1979 when he retired. Upon retirement

from the Air Force, the petitioner's father took up employment at the Airport at Dubai. Rajiv Wadhwa was born on 26<sup>th</sup> September, 1982 and completed his education until tenth standard in Dubai. In March 1998 the petitioner passed the tenth standard examination held in Dubai and conducted by the CBSE, New Delhi. He obtained admission to the eleventh standard at Kirti College, Dadar, Mumbai. He passed eleventh standard in May 1999 and after which he was admitted to HSC course in the twelfth standard. The Rules for admission to undergraduate medical course were traced in the subsequent paragraphs and thereafter, the argument was that exemptions granted to children of employees serving in the State and Central Government would throw some light on the intent of the Rule makers. Thus, the Division Bench held that but for the academic years 1995-96 and 1996-97, a candidate desirous of seeking admission to medical or dental courses had to pass the SSC as well as HSC examination from an Institution or School situate in the State of Maharashtra. An exception was, however, made in the case of students whose parents were domiciled in the State of Maharashtra. In their case, the Rules for 1995-96 provided that such students would be eligible for admission by relaxation of the conditions requiring the

passing of SSC examination and HSC examination from Institutions situate in the State of Maharashtra. The exemption contemplated by the Rules of 1995-96 in respect of students whose parents were domiciled in the State was continued for the years 1996-97, subject to further condition that the Institution from which the student had passed the SSC and/or HSC examination should be situate within the territory of India. The essential point was during the period 1995-97, the servants of Maharashtra State or its undertaking on deputation to Central Government / Government of India undertaking and sons and daughters of Maharashtra Government servants posted outside the State on a post of Government of Maharashtra or its undertaking shall be eligible for appearing in MH-CET-2000, even if they have passed their SSC and/or HSC from an Institution outside Maharashtra State, provided such candidate must have completed at least five years of their education between standard first to the standard of the qualifying examination i.e. HSC or equivalent from an Institution situated in the State of Maharashtra. Sometime in February, 2000, when Wadhwa sought to submit his application that was not accepted in view of the provisions contained in Rule 4.4 and that is how he was

permitted by an ad-interim order passed by this Court to appear for the CET to be conducted on 4<sup>th</sup> April, 2000. Thereafter, at his instance, the challenge was considered. Various orders of Division Benches of this Court, including some of those relied upon by the learned Advocate General were brought to the notice of the Bench and after all of them were referred, including the guiding principle in Dr. Pradeep Jain, the Division Bench would hold that departure from the principle of merit in making admissions by the Supreme Court means that it would still not be open to the State to make wholesale reservation on the basis of the domicile, residential and institutional preferences. It then proceeded to hold that Rule 4.4. would pose a problem and it can debar a student who even otherwise is domiciled in the State from seeking admission in the State Quota. The issue before the Court was whether a candidate who otherwise fulfills the requirement of residential or domicile within the State can be excluded from admission solely on the ground that he or she has not passed standard tenth from within the State. It is in these circumstances and because of the absence of the other Rule that the Division Bench read down Rule 4.4 and held that unless so read, it would not be possible to save it from the vice of

arbitrariness and unconstitutionality. We do not see how we can read these observations relied upon and particularly paragraph 21 in isolation and *de hors* the background facts. However, after *Rajiv Wadhwa* (supra), there has been a complete change in the Rules and each of the Rules after Wadhwa's case have been prescribing the eligibility criteria on both counts, namely, residential / domicile and obtaining educational qualifications, in both tenth and twelfth standard examinations, cleared from within the State of Maharashtra is the prescription. It is thus not possible to agree with the petitioners' advocates that we must ignore the stipulation of passing the tenth examination from within the State and go on and relying upon other clauses to hold them eligible. Once we find this is but a common thread and flowing from these three rules and coupled with these three rules that this Court and the Hon'ble Supreme Court consistently laying down the principle that they do not fall foul of the constitutional mandate, can we construe them otherwise. Pertinently, in Wadhwa's case, we have not found the Division Bench making a reference to the judgments of the Hon'ble Supreme Court in the case of *Anant Madaan* and *Mohan Bir Singh Chawla* (supra). That is an additional reason why we cannot, relying upon the

judgment in Wadhwa's case, take a different view.

75           Finally what remains is the reliance by the counsel appearing for the petitioners on the contents of the notice and the interim and final order of the Division Bench at Nagpur for this academic year. We think that this is an argument in desperation. The interim order of the Division Bench was passed with reference to a Rule and that Rule has been quoted in the order itself. The Division Bench found that a screen shot of the Information Brochure contains clause 4.7 or 4.8 to which a reference is made. This clause appeared to the Division Bench to be inconsistent with the amendment effected on 2<sup>nd</sup> September, 2016 to the Maharashtra Un-Aided Private Professional Educational Institution (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016. Rule 5 thereof had been amended and the provision in the form of clause (b) enables SSC or equivalent examination from outside the State of Maharashtra being taken, still, the candidate is eligible for admission to undergraduate Health Science courses subject to the conditions stipulated therein. The petitioners claim that they have satisfied these conditions.

76           With greatest respect to the Division Bench, we find that its attention was not invited to the complete Rules and the amendments in toto. What we find from the Notification and which has been published in the Maharashtra Government Gazette on 2<sup>nd</sup> September, 2016, notifying the amendment Rules of 2016, is that in paragraph 2 of this Notification, Rule 5 of the Rules has been referred in sub-rule 1, for Entry A, the entry as set out in this Notification is substituted. As far as clause B is concerned, that has been inserted with a rider.

77           Thus, there is Entry A in the earlier Rule which is substituted by Entry A with its sub-clauses and when it makes a substitution in sub-clause (vii) what it says is notwithstanding anything contained in clause 1 to 5 and 6 for academic year 2016-17, the candidates complying with the following eligibility conditions shall also be eligible to seek admission for this category. Clause B which has been referred by the Division Bench is without noticing its non obstante clause at all. With its sweep had the clause been noticed or the attention of the Division Bench been invited to it, possibly it would not have rendered a

conclusion even at the interlocutory stage as has been rendered and relied upon. Thus, the order of the Division Bench, without noticing a statutory prescription in its entirety, can safely be termed as *per curiam* and not binding on us. It could not have also been held to be binding on the State and the respondents before us even though acting in furtherance thereof, they may have granted admissions to some students. It is only for the academic year 2016-17 that the non obstante clause enables the candidates to comply with the eligibility condition in sub-clauses (a) and (b) of clause 7 of Entry A that the relaxation or exemption would apply. It can have no application to the admissions for the academic year 2018-19 when there is a set of Rules as noticed by us hereinabove and firmly in place. It is in these circumstances that the concession of the learned Assistant Government Pleader given or made before the Nagpur Bench of this Court would not bind the State at all. That is a concession on law. No amount of concession and on a question of law can bind the State Government. It is well settled that in matters of constitutional provisions or interpreting of a law or legal provision, it is only the stand of the Advocate General which would ordinarily bind the State. No other counsel, much less, an

Assistant Government Pleader can make any statement of this nature which would bind the State. [*Periyar and Pareekanni Rubbers Ltd. vs State of Kerala, AIR 1990 SC 2192*]

78           In such circumstances, we do not think that either the order of the Division Bench at Nagpur or the notice published in furtherance thereof can protect the students before us. Their reliance on the same is entirely misplaced. All that we see and as a result of this order and the notice is that other students get an opportunity to once again raise the same issues and take our precious judicial time. All this could have been avoided had the State conducted itself properly and in an organized manner. We say nothing more.

79           Mr. Naidu's arguments based on the Rules do not impress us. He would only say that even the qualifying examination need not be passed from within the State for the candidate represented by him has taken the qualifying examination from the State of Kerala. No amount of reliance placed by him on the Rules or its wording would assist him when the legal position and binding upon us is as clear as mentioned

herein above. In the circumstances, we do not see how this candidate can obtain admission or can be held to be eligible for admission under the State Quota.

80 Finally, the alternate argument of those students who say that they have now been admitted and the first round being over, their admission need not be disturbed, is left for being considered. In the affidavit filed in the Writ Petition which was argued by Mr. Naidu and which affidavit reflects the common stand of the Government, it is stated that the reproduced paragraph therefrom would indicate the number of students. That 101 students submitted their application on-line after the notice dated 13<sup>th</sup> June, 2018, was published by the third respondent. Out of these 101 students, 67 candidates attended document verification process in the first round and out of 67 candidates, 31 were selected for MBBS/BDS course. Out of 31 selected candidates, 14 are selected for Government MBBS and 4 for Private MBBS. One candidate is selected for Government BDS and 5 for private BDS course. None of those who had moved the Nagpur Bench of this Court could secure admission in Health Science courses. We had brought the argument in alternate to the

notice of the learned Advocate General and at the conclusion of his submissions, he sought time to take further instructions. On further instructions Mr. Kumbhakoni, learned Advocate General duly tendered an affidavit of the Director of Medical Education & Research which says that the chart annexed to this affidavit of 26<sup>th</sup> July, 2018, would demonstrate that 30 candidates out of 31 candidates joined the course. One candidate did not join. Out of 31 candidates who have joined, 10 candidates have submitted Status Retention Form expressing their intention to continue with the allotment and not to participate in the further rounds of admission in the State Quota. 6 candidates were allotted seats in the first round of medical counselling through All India Quota. 25 candidates were not allotted seats in the first round of medical counselling. Thus, it is not correct to say that all the 31 petitioners were allotted seats in the first round of All India allotment by Medical Counselling Committee and that all of them have cancelled their allotments only to take seats in the State Quota. Only 6 out of 31 were allotted seats in the first round of All India Quota out of which 5 have joined the seats allotted to them from the State Quota. The Director is not aware as to whether these 5 candidates have cancelled their allotments during the

course of first All India allotment by the Medical Counselling Committee on the basis of which a claim of hardship is made.

81           We have heard both sides on this limited point, but as we have upheld the validity of the Rules, then, this alternate argument need not detain us. First of all, the Rules with the same phraseology were throughout in place. The Rules for admission under the State Quota would have been validly notified and relied upon by the State Government and the Directorate in granting admissions under the State Quota. Once the freedom and liberty to make rules and to complete the process in accordance therewith is afforded by law, then, we are nobody to allow such alternate requests of the petitioners and on the specious pleas of hardship to them. The Rules were in place for decades together. Their wording and placement may have changed for some academic year or the other. However, the stipulation of residence coupled with the passing of examination were made known to all and throughout they were in place. They were in place even for this academic session and known to the petitioners and such candidates from 6<sup>th</sup> June, 2018, itself. Despite all this, after relying upon a notice published by the State Government, but

contrary to the Rules, they take their chances in the State Quota, then, they are themselves to blame. They should have taken due care and ought to have been diligent enough before giving up any opportunity at the All India level or taking admissions in the State Quota on some tentative and temporary understanding given to them about the interpretation of the Rules. Once the law does not permit them to enter the State Quota, then, we are nobody to assist them. The alternate argument on the ground of hardship is also, therefore, rejected.

82           In the passing we may invite the attention of all concerned to a judgment of the Hon'ble Supreme court delivered as far back as on 25<sup>th</sup> April, 1969, in the case of *Kumari Chitra Ghosh & Anr. Vs Union of India & Ors. vs Union of India* reported in (1969) 2 SCC 228 on the ambit and scope of Article 14. While discussing that aspect, the Hon'ble Supreme Court held that in matters of this nature, the classification in the cases based on intelligible differentia, which distinguishes them from the group to which the appellants before the Supreme Court belonged, would be enough to negative their challenge. The Supreme Court held that it is the Central Government which bears the financial

burden of running the medical college. It is for it to lay down criteria of eligibility. The Government cannot be denied the right to decide from what sources the admissions will be made. If the sources are properly classified, whether on territorial, geographical or other reasonable basis, it is not for the courts to interfere with the manner and method of making the classification. If the sources have been classified in the manner done in that case, then, it is difficult to say how its classification has no rational nexus with the object of imparting medical education as also of selection for the purpose. This is not, therefore, a case of any preferential treatment either.

83           We have but followed this principle and we have found that the challenge to the impugned Rules on the ground that they violate the mandate of Article 14 can safely be negatived by holding that the classification is made on a reasonable basis and has a definite nexus with the object sought to be achieved.

84           As a result of the above discussion, Rule in each of these petitions is discharged. The interim order, if any, to stand vacated. The petitions are dismissed but without any order as to

costs.

85           After the judgment was dictated and pronounced in open Court, Ms. Pooja Thorat appearing for the petitioners in some of the petitions, on instructions, seeks a stay of this order and prays that the interim arrangement be continued at least for a few weeks to enable the candidates who are now displaced by this judgment and order to consider their position and possibly challenge this judgment in a higher Court. The request is opposed on behalf of the State Government and the Directorate of Medical Education & Research by the learned Advocate General so also by the counsel for the intervenors.

86           We have heard counsel on this point as well and we find that there is a complete schedule which has been put in place regulating the process of granting admissions. There are stages and which are well and properly defined with details and the dates on which they would take place. Today, namely, 26<sup>th</sup> July, 2018, is a stage of declaration of the list of selected candidates of two rounds. If we allow by way of an interim arrangement, the petitioners, who are not eligible, to hold on to their seats, then,

those waiting for these very seats and fully eligible for being considered under the State Quota would suffer immensely. It is a question of their career and their prospects as well. Eventually rights and equities have to be balanced. We cannot, in the garb of allowing the petitioners to hold on to their seats, frustrate and defeat the rights of eligible candidates. Though there is a hardship, we cannot grant any relief only and purely on the ground of hardship and sympathy. We decline the request of Ms. Thorat. The prayer to continue the interim arrangement is thus refused.

*SMT. BHARATI H. DANGRE, J.*

*S.C. DHARMADHIKARI, J.*