

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6460 OF 2020
WITH
CA/6818/2020 WITH CA/6957/2020**

1. Sampat s/o Baburav Gaikwad,
Age: 47 years, Occ.: Business,
R/o. Dhamangaon, Tq. Jamkhed,
Dist. Ahmednagar
 2. Puja d/o Sampat Gaikwad
Age: 17 years, Occ.: Education,
R/o. Dhamangaon, Tq. Jamkhed,
Dist. Ahmednagar
Through its legal guardian-father
Sampat s/o Baburav Gaikwad **..Petitioners**
- VERSUS**
1. The State of Maharashtra,
Through its Principal Secretary,
Medical Education and Drugs
Department, Mantralaya, Mumbai
 2. The Directorate of Medical Education
and Research, Maharashtra State,
Mumbai **..Respondents**

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Advocate for Petitioner:

Mr. A. G. Ambetkar

Senior Advocate/I/c. GP for Respondents No. 1 & 2:

Mr. Anil V. Anturkar, Senior Advocate i/b. Mr. D.

R. Kale I/c. GP

Advocate for Applicant(CA/6818/2020):

Mr. Milind Patil

Advocate for Applicant(CA/6957/2020):

Mr. N. B. Khandare

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**WRIT PETITION NO. 6461 OF 2020
WITH
CA/6813/2020 WITH CA/6476/2020
WITH**

CA/6695/2020 WITH CA/6953/2020

1. Parag s/o Sharad Chaudhari
Age 17 yrs. Occ. Education,
Through under guardian,
Sharad Karbhari Chaudhari,
Age 55 yrs. Occ. Agri.
r/o near Reliance Tower, Akole
Tq. Akole, Dist. Ahmednagar
 2. Siddhnat Ajit Hase
Age 18 yrs. Occ. Education,
r/o Kacheri Road, Akole,
Tq. Akole, Dist. Ahmednagar
 3. Gaurav Vijay Waghmare,
Age 18 yrs. Occ. Educational
r/o Malizap, Tq. Akole,
Dist. Ahmednagar
 4. Vedika Sunil Vaidya
Age 18 yrs. Occ. Education
r/o at post Sugaon, Tq. Akole,
Dist. Ahmednagar
 5. Rutuja Pravin Wakchuare
Age 17 yrs. Occ. Education
Through under guardian,
Pravin Anandrao Wakchaure,
Age 53 yrs. Occ. Business
r/o K. G. Road, near Gadak Show Room
Akole, Tq. Akole, Dist. Ahmednagar
- ..Petitioners**

VERSUS

The State of Maharashtra,
Through its Principal Secretary,
Medical Education and Drugs
Department, G. T. Hospital Campus,
9th Floor, Lokmanya Tialk Marg,
Mantralaya, Mumbai-01

..Respondent

...

Advocate for Petitioner:
Mr. S. B. Kadu & Mr. Aniket S. Chaudhari

Senior Advocate/I/c. GP for Respondent/State: Mr.
 Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
 Kale I/c. GP
 Advocate for Applicant(CA/6813/2020 &
 CA/6695/2020):
 Mr. S. S. Jadhavar
 Advocate for Applicant(CA/6476/2020):
 Mr. H. V. Patil
 Advocate for Applicant(CA/6953/2020):
 Mr. N. B. Khandare

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**WRIT PETITION NO. 6475 OF 2020
 WITH
 CA/6816/2020 WITH CA/6814/2020
 WITH
 CA/6817/2020 WITH CA/6956/2020**

1. Santosh s/o Sudam Ambedkar,
 Age: 48 years, Occ: Business,
 R/o. Bhalwani, Tq. Parner,
 Dist. Ahmednagar
 2. Samruddhi d/o Santosh Ambedkar,
 Age: 19 years, Occ: Education,
 R/o. Bhalwani, Tq. Parner,
 Dist. Ahmednagar
- ..Petitioners**
- VERSUS**
1. The State of Maharashtra,
 Through its Principal Secretary,
 Medical Education and Drugs
 Department, Mantralaya, Mumbai
 2. The Directorate of Medical Education
 and Research, Maharashtra State,
 Mumbai
- ..Respondents**

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Advocate for Petitioner:
 Mr. P. R. Katneshwarkar i/b. Mr. Ketan D. Pote
 Senior Advocate/I/c. GP for Respondents/State: Mr.
 Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
 Kale I/c. GP
 Advocate for Applicant(CA/6816/2020):

Smt. Anjali Bajpai Dube
 Advocate for Applicant(CA/6814/2020):
 Mr. Dnyaneshwar J. Patil
 Advocate for Applicant(CA/6817/2020):
 Mr. V. D. Gunale
 Advocate for Applicant(CA/6956/2020):
 Mr. N. B. Khandare

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WRIT PETITION NO. 6840 OF 2020

1. Arun Deorao Varat,
 Age: 50 years, Occ: Service,
 R/o. Loni Khurd, Tq. Rahata,
 Dist. Ahmednagar
2. Shreyash Arun Varat
 Age: 18 years, Occ: Education,
 R/o. Loni Khurd, Tq. Rahata,
 Dist. Ahmednagar

..Petitioners

VERSUS

1. The State of Maharashtra,
 Through its Principal Secretary,
 Medical Education and Drugs
 Department, Mantralaya, Mumbai
2. The Directorate of Medical Education
 and Research, Maharashtra State,
 Mumbai

..Respondents

...

Advocate for Petitioner:
 Mr. Abhijeet P. Avhad
 Senior Advocate/I/c. GP for Respondents/State: Mr.
 Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
 Kale I/c. GP

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WRIT PETITION NO. 7763 OF 2020

1. Dr. Manoj Naresh Jain
 (Father of Minor Shrishti Manoj Jain),
 S/o Late Nareshchand Jain,
 R/o 6/308, Pawan Baug, Near Chincholi,
 Phatak, Malat (West),

Mumbai 400-064
NEET UG ROLL NO. 3110216039

2. Neha Parag Dharap,
D/o. Sri Parag Dharap,
R/o 906, Hrishikesh Apartment,
Veer Sarvarkar Marg, Near
Siddhivinayak Temple, Dadar West,
Mumbai-400028
NEET UG Roll No. 3110201767
3. Niyati Manish Shah,
D/o Dr. Manish Shah,
R/o 13, Kailash Niketan, L. D. Ruparel
Marg, Malabar Hill, Mumbai 400-006
4. Aditya Nikunj Shah,
S/o Sri Nikunj Jawaharlal Shah,
R/o 1401, Chheda Height, B. M. Konekar
Marg, Near Odeon Swimming Pool,
Ghatkopar (East), Mumbai-400077
NEET UG Roll No. 3110103081
5. Hiya Ashish Seth,
D/o Sri Ashish Seth,
R/o 222, Jolly Marker-3, Cuffe Parade
Mumbai-400005
NEET UG Roll No. 3110218088 **..Petitioners**

VERSUS

1. State of Maharashtra,
Through its Secretary,
Medical Education and Drugs
Dept., 9th Floor, G. T. Hospital Campus,
New Mantralaya, Lokmanya Tilak Road,
Mumbai 400002
2. Directorate of Medical Education &
Research Govt. Dental College &
Hospital Building, St. George's
Hospital Compound, Near V. T. Mumbai-
400 001
3. Office of Commissioner, State Common
Entrance Test Cell, Maharashtra

State, Through Commissionerate, 8th
 Floor, New Excelsior Building, A.K.
 Nayak Marg, Fort, Mumbai-400 001..**Respondents**

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Advocate for Petitioner:

Mr. Vivek Singh, Adv. & Mr. R. K. Panday, Adv.
 i/b. M/s. PRS Legal and Mr. S. M. Kulkarni, Adv.
 Senior Advocate/I/c. GP for Respondents/State: Mr.
 Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
 Kale I/c. GP

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WRIT PETITION NO. 7759 OF 2020

Nikita Santosh Lakhotiya,
 Aged about 19 Years, Occ. Student,
 R/o N/575, Kirana Oil, Near Agrawal
 Bhawan, Kamptee, Kamptee City,
 Nagpur-441002 **..Petitioner**

VERSUS

1. The State of Maharashtra,
 Through its Principal Secretary,
 Medical Education and Drugs
 Department, Mantralaya,
 Mumbai
2. Directorate of Medical Education &
 Research, Maharashtra State,
 Mumbai **..Respondents**

...

Advocate for Petitioner:

Mr. Vivek Singh, Adv. i/b. Mr. Ashwin Deshpande
 Senior Advocate/I/c. GP for Respondents/State: Mr.
 Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
 Kale I/c. GP

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WRIT PETITION NO. 7785 OF 2020

1. Devanshi Dagli
 Age: 18 years, presently residing at
 R/at BB 1701, NR Aryararta,
 NL Complex, Dahisar (E),
 Mumbai - 400068

2. Saloni Chatwani,
Age:18, present residing at
R/at F-302, Mody park, Irani Wadi-3,
Kandivali (W), Mumbai - 400067
3. Sanjana Barot
Age: 18 years, present residing at
R/at F/902, Orchid suburbia CHS,
Bandar Pakhadi Road, Kadiwali (W),
Mumbai - 400067
4. Kasturi Prakash Mendhule
Age: 18, present residing at
Vikas Nagar, Plot No. 11, Behind Sai
Mandir, Nagpur
5. Sanaya Shah,
Age: 18 years, present residing at
R/at 19 Lovely Rose, Next to
Mukteshwar Temple, Juhu,
Mumbai - 400049
6. Yutheeka Chiwhane
Age: 18 years, present residing at
Address: plot no. 85, Chunabhatti road,
Sai Mandir Gajanan Nagar,
Vivekanand Nagar, Nagpur,
Maharashtra 440015
7. Devansh Lalwani
Age: 18 years, present residing at
Adress - 10/4 Surya Kiran Bungalow
Behind Mankhurd Central Bank,
Mankhurd, Mumbai-400088
8. Naitica Darooka
Age: 18 years, present residing at
Address: 201, Pareejat Building,
2nd floor, Opposite Bagadka College,
J B Nagar, Andheri (E), 400059
9. Shrinil Virani
Age: 18 years, present residing at

9, Maheshwar Dham, 60 Feet Road,
Ghatkopar East near Canara bank,
Mumbai, Mumbai suburban,
Maharashtra-400077

10. Sachi Kalawadia
Age:18, presently residing at
1103 Ganga tower 2, Atur Park,
Chembur, Mumbai - 400071 ..Petitioners

VERSUS

1. State of Maharashtra,
Through its Department of Medical
Education & Drugs,
Mantralaya, Mumbai
2. Directorate of Medical Education &
Research,
Govt. Dental College &
Hospital Building, St. George's
Hospital Compound, Near V. T.,
Mumbai- 400 001 ..Respondents

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Advocate for Petitioner:

Mr. R. N. Dhorde, Senior Advocate i/b. Mr. M. V.
Thorat & Mrs. Pooja V. Thorat
Senior Advocate/I/c. GP for Respondents/State: Mr.
Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
Kale I/c. GP

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WRIT PETITION NO. 7796 OF 2020

WITH

CA/7666/2020

1. Nirmayee Yogesh Chiplonkar
D/o Sri Yogesh Chiplonkar
R/o C9 Fairlawn CHS, VN Purav Marg,
Near Diamond Garden, Chembur,
Mumbai 400-071
NEET UG Roll No. 3110205248
2. Roshani Shankar Lokhande,
D/o Sri Shankar Lokhande,
R/o Vaibhav Nagar Co-Op. Society, Room
Number 1311, Chembur, Mumbai-400071

NEET UG Roll No. 3110125153

3. Amartya Shukla
S/o Sri Parthsarthi Mukund Shukla
C/o Shukla Hospital, Gangadhar
Plots, Station Road, Akola,
Maharashtra-444001
NEET UG Roll No. 3102015241 ..Petitioners

VERSUS

1. State of Maharashtra,
Through its Secretary,
Medical Education and Drugs
Dept., 9th Floor, G. T. Hospital Campus,
New Mantralaya, Lokmanya Tilak Road,
Mumbai 400002
2. Directorate of Medical Education &
Research Govt. Dental College &
Hospital Building, St. George's
Hospital Compound, Near V. T. Mumbai-
400 001 ..Respondents

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Advocate for Petitioner:

Mr. Vivek Singh & Rajeev K. Panday i/b. M/s. PRS
Legal

Senior Advocate/I/c. GP for Respondents/State: Mr.
Anil V. Anturkar, Senior Advocate i/b. Mr. D. R.
Kale I/c. GP

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CORAM:

**S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

**Reserved for
Orders on:**

08th DECEMBER, 2020

**Order Pronounced
on:**

18th December, 2020

JUDGMENT (*Per S. V. Gangapurwala, J.*):

1. Rule. Rule returnable forthwith. With the consent of learned Counsel for respective parties petitions are taken up for final hearing.

2. The petitioners in all these writ petitions agitate against the policy decision of the State Government abolishing regional reservation for admission to the medical courses. The grounds of challenge in all these petitions are similar. To avoid rigmarole, all these petitions are decided by a common judgment.

3. The petitioners are aspirants for admission to medical courses.

4. The admission to medical courses is governed by the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015 [*hereinafter referred to 'Act-2015'*]. The State, exercising its powers U/Sec. 23 of the Act-2015 framed the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time

Professional Undergraduate Medical and Dental Courses) Rules, 2016 [*hereinafter referred to 'Rules-2016'*]. Rule 9 of Rules-2016 channelizes the distribution of seats in the State of Maharashtra. 30% of the seats are first made available for candidates from the State and these seats are filled in on the basis of NEET merit list. After exclusion of State level 30% quota the remaining 70% seats are filled from amongst the candidates who have passed H.S.C. from the colleges situated in the respective region subject to the constitutional and female reservations as per the prevailing rules in that behalf. The rule provide for 70% regional quota.

5. The State, on 07.09.2020, in exercise of powers U/Sec. 23 of the Act-2015 amended Rule 9 and 12 of the Rules. The said rules are called as the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) (Amendment) Rules, 2020 [*hereinafter referred to 'Amendment Rules-*

2020']. Amendment Rules-2020 amended Rule 9 of Rules-2016. As per the amended rules all the seats shall be made available for all candidates from the State and these seats shall be filled on the basis of NEET merit list. The regional reservation of 70% has been abolished. All seats are now made available for all candidates from the State on merit.

The petitioners are challenging the amendment doing away with the regional reservation.

6. Mr. R. N. Dhorde, learned Senior Advocate, Mr. Ambekar, Mr. Kadu and Mr. Chaudhari, Mr. Katneshwarkar, Mr. Avhad, Mr. Singh and Mr. Panday, learned Counsel for the petitioners in respective petitions canvassed their submissions.

7. The gravamen of their contentions are culled out as under.

A] The regional reservations were introduced by executive instructions in the year 1997. The Rules-2016 gave it statutory recognition.

The same was to remove the regional imbalance and to protect the interest of the students belonging to Vidharbha and Marathwada backward regions. The State has not placed any State survey or statistical data to come to a decision that the regional imbalance in the State of Maharashtra is removed and that there is no requirement of 70:30 policy formula.

B] The Amendment Rules – 2020 rules are sought to be applied retrospectively. The rules cannot be applied retrospectively. The rules of the game cannot be changed once the game starts. The brochure for NEET (UG) Examination – 2020 was published on 01.12.2019. At the time of publication of NEET brochure, 70:30 policy formula was in force and applicable. The Amendment Rules – 2020 were introduced after 10 months of the admission process. They cannot be applied to the admission process for the academic year 2020-2021. Reliance is placed on the judgment

of the Apex Court in case of **K. Manujusree etc. Vs. State of Andhra Pradesh and another** reported in 2008 (3) SCC 512.

C] The Amendment Rules – 2020 are arbitrary and illegal, as those are not based on any intelligible differentia and are violative of Articles 14 and 19 of the Constitution of India. 70:30 policy formula is still in existence for other courses, such as, Engineering, Arts and other branches. Removing 70:30 policy for only one stream of education is arbitrary and unreasonable. The State has adopted pick and choose policy.

D] Different counts of reservation like hilly area quota, Maharashtra Karnataka border quota, Defence quota still exist in medical admission throughout the State of Maharashtra. The local reservation still exists. 70:30 rule as was prevailing prior to Amendment Rules-2020 does not take away the right of meritorious candidates for getting

admissions in medical and Dental courses as the admissions are exclusively on the basis of State merit prepared pursuant to NEET results.

E] The policy of 70:30 bifurcation of seats viz. regional and statewide was in existence for more than 20 years. The policy of 70:30 reservation was challenged upon implementation of Rules-2016 by filing the Writ Petition No. 2426 of 2016 before the Nagpur Bench of this Court. The State supported the scheme of regional reservation by filing affidavit in the said writ petition. Now, impugned notification is an absolute 'volte face' by the State without any justification. The Apex Court affirmed the 70:30 formula also in Civil Appeal No. 6026 of 2008. Irreparable loss would be caused to the candidates of backward region.

F] The classification made by the State is not reasonable and does not satisfy the

conditions of intelligible differentia and reasonable nexus. The impugned action is arbitrary on the touchstone of guarantee of equality under Article 14 and is breached. Reliance is placed on the judgment of the Apex Court in case of **E. P. Royappa Vs. State of Tamilnadu** reported in 1974 (4) SCC 3 and in the case of **Ramana Dayaram Shetty Vs. The International Airport Authority** reported in 1979 (3) SCC 489.

G] Rule 9 of Rules-2016 is amended. The machinery of amendment should be so devised that it should not become a plaything at whims of politicians. As per Section 23(2) every rule made under the Act shall be laid before each house of State Legislature. The Amendment Rules-2020 are not laid before the State Legislature. The Rule, however, contemplates that there should be agreement of both the houses in making the modification in the rule and the modification should be notified and from the date of publication of

such decision in the official gazette the rule can be given effect to any such modified form. Unless the rules are placed before both the houses of the State Legislature the amended rules shall not come into play. The rules to get statutory recognition ought to be published in the official gazette and admissions pursuant to the rules without publication in the official gazette cannot be legal. The notification of Amendment Rules-2020 does not have existence in the eyes of law.

H] Article 371(2)(c) of the Constitution of India permits the Governor to require an equitable arrangement to be made for providing adequate facilities for technical education in respect of areas of Vidarbha, Marathwada and rest of the Maharashtra. Medical education falls within the scope of said Article. Under Article 371, the power is given to the President. Under Article 371, the State Government does not have inherent

powers in publishing the rules doing away with regional reservation as it affects the State of Marathwada and Vidarbha. The President alone has been given power in that regard. Reliance is placed on the judgment of the Apex Court in case of **S. Prakash Rao and another Vs. Commissioner of Commercial Taxes and others** reported in (1990) 2 SCC 259 and in case of **Ravindra Kumar Rai Vs. State of Maharashtra and others** reported in (1998) 3 SCC 183.

I] The Amendment Rules-2020 are introduced mid-way of the admission process; same cannot be adopted to. Reliance is placed on the judgment of the Division Bench of this Court in case of **Ajit Murur Vs. State Common Entrance Test Cell** reported in (2016) 5 AIR Bom. 392 and in another judgment of the Division Bench of this Court in case of **Shuham Kabu and another Vs. State of Maharashtra and others** reported in 2014 (1) Mh.L.J. 832. Reliance is also placed on the

interim order of the Apex Court in case of **Janhit Abhiyan Vs. Union of India** dated **30.05.2019** where the State was refrained from implementing EWS quota unless additional seats are sanctioned, as the same was said to be changed after initiation of the process.

8. Mr. Anturkar, learned Senior Advocate (Special Counsel) for the State countered the arguments of the learned Counsel for the petitioners. The contour of his arguments hetherto summarised.

A] Article 371 of the Constitution of India is only enabling provision. It is only when the Hon'ble President empowers the Hon'ble Governor then only the provision will come into force. So far as medical admission is concerned, the petitioners have not brought on record that the Hon'ble President has empowered the Hon'ble Governor to make any distribution so far as medical education is concerned. The technical education and

vocational training cannot be interpreted to mean medical education. Technical education is treated differently by the Constitution from medical education. The rules in question have not been framed either under Article 371 of the Constitution or under any Presidential Order or Government Order issued under Article 371 of the Constitution of India. The Amendment Rules-2020 is a piece of subordinate legislation under Section 23 of the Act-2015.

B] The Session of Maharashtra Legislature was due to be called on 03.08.2020. On account of Covid-19 pandemic; it was postponed and was conducted on 07.09.2020 and 08.09.2020 viz. only for two days. As a result of that, Section 23 of the Act-2015 would not apply. The said section would apply only when the total period of legislature is more than 30 days. The rules framed U/Sec. 23 of the Act-2015 is a subordinate legislation. It does not require any reasons to be

recorded. The other part of Section 23 suggests action can be taken by the State Government under the rules even before these rules are approved and if the rules are modified or deleted subsequently by the State Legislature and if the decision to that effect is published in the Government Gazette then only and that too with effect from that date of notification the said rule will either be deleted completely or will exist in the modified form as may be. The said portion of Section 23 clearly shows that anything which has been done in exercise of the rules earlier is also saved. This expressly, in fact, empowers the State Government to take the action as soon as rules have been framed without even waiting for the approval thereof by the State Legislature. Reliance is placed on the judgment of the Apex Court in case of **Quarry Owners Association Vs. State of Bihar** reported in 2000 (8) SCC 655 and **Atlas Cycle Industries**

Limited Vs. State of Haryana reported in 1979 (2) SCC 196. The learned Senior Advocate also referred to the excerpts of law of interpretation by G. P. Singh.

C] The argument of the respondents that reservation for Defence could have been deleted can hardly be a ground for challenging the validity of existing law.

D] By doing away with the abolition of regional quota the students of the backward regions of Marathwada and Vidarbha would be benefited. The data has been placed on record. The State has both the options available. While enacting Rules-2016 the 70:30 issue was resorted to by the Government. It was perfectly valid option then. Now, another option is exercised of deleting regional reservation. The same also would be valid. Reference is made to the judgment of the Apex Court in case of **Nidamarti Maheshkumar Vs. State of**

Maharashtra and others reported in (1986) 2 SCC 534.

E] There cannot be estoppel against the State Government. Rules-2016 were challenged before the Nagpur Bench. The Government while filing the affidavit defended the rules as per the prevailing situation then. That would not act as an estoppel against the State Government. Both the options are valid and constitutional. The judgment of the Apex Court in case of **Nidamarti Maheshkumar Vs. State of Maharashtra and others** is further followed by the Apex Court in **Deepak Sibal Vs. Punjab Unlversrty** reported in 1989 (2) SCC 145 and recently by the Bombay High Court in the judgment of **Mayuri Umesh Munde Vs. Directorate of Technical Education and others** reported in 2018 SCC Online Bombay 3536.

F] It is erroneous on the part of the petitioners to contend that the rules have been introduced in the midst of the admission

process. The NEET examination was conducted on 13.09.2020. On 16.10.2020, the result of NEET examination was declared. On 02.11.2020 the brochure was approved. On 03.11.2020 the brochure was brought into force whereas Amendment Rules-2020 are introduced on 07.09.2020. The contention that H.S.C. examination was conducted earlier is irrelevant. The H.S.C. examination is not relevant for the purpose of giving admission to the medical seats.

G] So far as Government Colleges are concerned the Amendment Rules – 2020 would not apply. The decision was taken in respect of the Government Colleges earlier.

9. The learned Counsel for the intervenors also canvassed their submissions and supported the submissions of the learned Senior Advocate for the State.

10. It is submitted by them that the regional reservation on 70-30% was disadvantageous to the

students of Marathwada and Vidarbha region. The same was violative of Article 15 of the Constitution of India. None of the petitioners are the students of Marathwada region. The students of those regions will have better education from well developed colleges in the rest of Maharashtra. The Division Bench of this Court has held regionwise reservation to the engineering courses as unconstitutional. Reference is made to the judgment of the Division Bench of this Court in case of **Association of Managements of Unaided Engineering Colleges Vs. State of Maharashtra and others** reported in 2006 (5) All. M. R. 688. It is further contended by the intervenors that Medical Council of India introduced National Eligibility-cum-Entrance Test based on the principle of one nation one test. NEET is prescribed to implement the principle of one nation one examination. The Medical Council of India as well as the Government of India has provided for 85% of quota for the students of respective States regionwise there is

huge anomaly in the number of available colleges in the State of Maharashtra.

The Medical Council of India introduced National Eligibility cum Entrance Test (NEET Test) based on the principle of One Nation One Test and to ensure that duty of the Medical Council of India to maintain standards of Medical Education is fulfilled. Hon'ble Supreme Court of India, in the case of Christian Medical College, Vellore and others Vs. Union of India has confirmed the authority of the Medical Council of India to introduce such test and accordingly the admission process to be carried out on the basis of the merit list carved out of the NEET Examination for admission to the courses of Medical Education is practically implemented since academic year 2015-2016 onwards.

Though the NEET is prescribed to implement the principle of "one nation, one examination", the Medical Council of India as well as the Government of India has provided for 85% quota for the students of respective state and the

students from all over the nation are allowed to compete for only 15% of the seats available in the medical colleges in other States. This decision has its rational for protecting the Federal nature of our Nation.

In the State of Maharashtra, till 2015 the admissions to M.B.B.S / Dental Colleges of State Govt. & some private institutes were governed by the Director of Medical Education and Research (State competent authority for admissions). In the admission process then implemented till 2015, the regional balance was sought to be maintained by providing 70% reservations to the students from the respective area and students from the remaining part of the State were allowed to compete for remaining 30% seats. After introduction of the NEET examination on the principle of, 'one nation one merit'. However, in spite of introduction of NEET examination, the State of Maharashtra continued implementation of the regional reservations. The applicant No. 1 association then proceeded to file

writ petition no. 12567 of 2016 to challenge the unfounded and unconstitutional reservation. In the said petition, the petitioners had invited attention of the Honourable High Court to the decision of the Honourable High Court thereby quashing regional reservations provided in the admission broacher of the admission process for private Engineering Colleges, i.e. the judgment in the case of Association of the Managements of Unaided Engineering Colleges Vs. State of Maharashtra and others reported in 2006 (6) Bom.C.R. 792, wherein the Hon'ble High Court has specifically declared regional reservation provided for Engineering courses by declaring that in absence of any Statute thereby carving out exception to the provisions of Article 15 to provide regional quota, 70% reservation provided on regional criteria was unconstitutional and was beyond the authority of the committee formed for conducting Entrance Eligibility Test. The said decision is squarely applicable for the admission process for Medical and allied courses. The

Hon'ble High Court, vide order dated 03rd May 2017 passed in WP No. 12567 of 2016 called upon the respondents to justify how the regional reservation provided for medical courses is sustainable in absence of any legislation.

11. Before we proceed to deal with the contentions of the learned Counsel for the parties and the contentious issues raised by them it would be relevant to refer to the relevant provisions of the Act and the Rules.

"Section 23 of the Act-2015

23. (1) The State Government may, by notification in the Official Gazette make rules to carry out the purpose of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form, or be of no effect, as the case may be; so, however, that any such modification, or annulment shall be without prejudice to the validity of anything

previously done or omitted to be done under that rule."

"Rules 6 and 9 of Rules-2016

6. Eligibility – (a) *Eligibility for admission to undergraduate Medical and Dental Courses:-*

(i) The eligibility for admission to the first year of MBBS and BDS course shall be such as notified by the Government under sub-section (1) of Section 3 of the Act.

(ii) A candidate belonging to open category must secure not less than 50% percentile in NEET. A candidate belonging to constitutional reservation must secure not less than 40% percentile in NEET.

(b) Cut-off date for eligibility: The eligibility of the candidate shall be determined or decided for all purposes including for applicability of all these Rules and Regulations by considering the last date of submission of preference form as the cut-off date. It is made abundantly clear that if a candidate is found ineligible as on the last date of submission of preference form, in terms of these Rules and Regulations, and if such ineligible candidate acquires the requisite eligibility after the aforesaid cut-off date, ie. after the last date of submission of preference form, such subsequent acquisition of eligibility will not make an ineligible candidate eligible for any purpose whatsoever, much less for the purpose of admission.

9. Distribution of Seats.- *The Distribution of seats shall be allotted by the Competent Authority.*

(i) Distribution of seats in State level 30 percent Quota.- Out of the seats at the disposal of the Competent Authority, 30 percent of such seats shall be first made available for candidates from the State and these seats shall be filled on the basis of

NEET merit list. There shall be constitutional and female reservations in these seats as per the prevailing rules in this behalf.

(ii) Distribution of seats in Regional level 70 percent Quota.- After the exclusion of State level 30 percent quota seats referred in (i) above, the remaining 70 percent seats shall be filled from amongst the Candidates who have passed HSC from the colleges situated in the respective region, subject to the constitutional and female reservation as per the prevailing rules in this behalf.

(iii) Criteria for 70 percent Regional Quota seats for candidates who have passed qualifying examination from Maharashtra State.- Region of the candidates for selection under 70 percent regional quota seat will be the region from where he or she has passed HSC or equivalent examination.

(iv) Criteria for 70 percent Regional Quota for candidates who have passed qualifying examination from Institution situated outside Maharashtra State.- For candidates who have passed qualifying examination from outside the State of Maharashtra:

Sr. No.	Quota/Type of candidate	Region for 70 percent regional quota
1	State Government employee-Eligible under rule 5(1)(B) (Transferred out of Maharashtra)	Parents region of posting before transfer/deputation
2	State Government employee-Eligible under rule 5(1)(B) (Transferred back to Maharashtra)	Parents region of posting
3	Central Government employee-Eligible under rule 5(1)(C)	Parents region of posting

(v) Selection to Medical and Dental courses at the Private Unaided institutions through CAP shall be subject to permission or approval or affiliation from, (1) Government

of India; (2) MCI or DCI; (3) Government of Maharashtra; and (4) MUHS. The "intake capacity" at a particular college shall be the 'minimum number of seats' permitted by the above said authorities;

(vi) As per Maharashtra Private Professional Educational Institutions (Reservation of Seats for admission for SC, ST, Denotified Tribes – Vimukta Jatis, NT and OBC) Act, 2006 (Mah. XXX of 2006) dated 1st August 2006, 25 percent seats of the total intake capacity of Unaided Private Professional Educational Institutions shall be allotted to the constitutional reservation category candidates;

(vii) There shall be 30 percent State and 70 percent Regional Quota from the seats available at the disposal of Competent Authority. There shall be 30 percent female reservation under both."

"Rule 9 of the Amendment Rules-2020

9. Distribution of Seats.- The Distribution of seats shall be allotted by the Competent Authority.

(i) All the seats at the disposal of Competent Authority shall be made available for all the candidates from the State and these seats shall be filled in on the basis of NEET merit list. There shall be constitutional and female reservation in these seats as per the prevailing rules in this behalf;

(ii) Selection to Medical and Dental courses at the Private Unaided Institutions through CAP shall be subject to permission or approval or affiliation from (1) Government of India; (2) MCI or DCI; (3) Government of Maharashtra; and (4) MUHS. The "intake capacity" at a particular college shall be the 'minimum number of seats' permitted by the above said authorities;

(iii) As per Maharashtra Private Professional Educational Institutions (Reservation of seats for admission for SC, ST, Denotified Tribes-Vimukta Jatis, NT and OBC) Act, 2006 (Mah.XXX of 2006), 25 percent seats of the total intake capacity of Unaided Private Professional Educational Institutions shall be allotted to the Constitutional reservation category candidates;."

12. Rules-2016 and Amendment Rules-2020 are framed by the State Government exercising powers bestowed upon it U/Sec. 23(1) of the Act-2015.

13. Section 23 of the Act-2015 confers upon the State power for subordinate legislation. The exercise of legislative power derived from the statute can be assailed on the grounds such as violation of the Constitution, lack of legislative competence, violation of the enabling act including violation of the mandatory procedure prescribed, arbitrariness, that it cannot be said to be in conformity with the statute or Article 14 of the Constitution, or that it is made in bad faith.

14. In considering the vires of subordinate legislation it will be presumed to be intra vires.

If a subordinate legislation is open to two constructions one which would makes it bad and the other good, the construction which makes it good has to be adopted.

15. The State Government was within its powers and the authority to provide for 70% State reservation while framing Rules-2016. At the same time doing away with 70% State reservation under Amendment Rules-2020 is also within the powers of the State. The same is not prohibited under the statute or the rules, nor the same can be said to be by any stretch violative of the constitutional mandate.

16. In the affidavit filed by the State, the State has placed on record statistics to demonstrate that removing regional reservation would in a way help the students of Marathwada, Vidarbha region. In these regions number of medical colleges are less compared to the rest of Maharashtra. The State was within its powers to frame Amendment Rules-2020. The admissions to the

medical courses are given pursuant to the competitive NEET examination. The students throughout the State would be admitted pursuant to the marks obtained in NEET examination. Now, merit would be the only criteria throughout the State; apart from the vertical and horizontal reservation as prevailing, the merit and merit alone would get precedence if regional reservation is abolished. In education viz. Medical courses the object of selection is to secure the best and the most meritorious talent so that better Doctors are produced. Appearing for H.S.C. examination from a particular region would not have any effect nor would play a pivotal role in seeking admission to the medical course. In view of that, the place from where the student has passed H.S.C. examination would not have any relevance.

17. The Amendment Rules-2020 do not appear to be against the constitutional mandate nor it overrides the stipulation under any statute. The purpose of Amendment Rules-2020 was to end regional merit and the State merit is given

priority. The person getting better marks on merits would get precedence in admission to the medical courses. Such a consideration does not appear to be deficient of intelligible object or that it is not that there is no nexus to the object to be achieved. The object to be achieved is to prefer merit. The same cannot be said to be arbitrary so as to be violative of Article 14 of the Constitution of India. On the contrary, object of selecting the best candidate on a State level basis would not be achieved due to prevalence of regional reservation and would take a back seat and that would not be in consonance with purpose underlying Article 14 and is not conducive to purpose underlying medical education and in a way would be violative of Article 14 and 15 of the Constitution of India. Reference can be had to the judgment of the Apex Court in case of **Mnino A. Peeriakaruppan Vs. State of Tamil Nadu** reported in 1971 (1) SCC 38. In the said case unit wise distribution of seats

was held to be violative of Article 14 and 15 of the Constitution of India.

18. Article 371 of the Constitution is an enabling provision. The Hon'ble President may by order made with respect to the State of Maharashtra or Gujarat provide for any special responsibility to the Governor for equitable arrangement providing adequate facilities for technical education and vocational training subject to the requirements of the State as a whole. Article 371 in no way rips into the powers of the State to enact laws governing technical education and vocational training. The object of Article 371 is to enable the Hon'ble President to lay special responsibility on the Governor of Maharashtra or Gujarat for the developmenet of certain areas. That would in no way restrict the powers of the State to enact laws governing the technical education and vocational training. Having said so, it would not be relevant to enter into the debate as to whether the technical

education and vocational training would include medical education.

19. In case of **Nidamarti Maheshkumar Vs. State of Maharashtra and others** (*supra*) the Apex Court in paragraph no. 6 observed that regionwise scheme adopted by the State Government clearly results in denial of equal opportunities violative of Article 14 and 15 of the Constitution of India.

20. In the said judgment the Apex Court also observed that it would not be unconstitutional for the State Government to provide reservation or preference in respect of certain percentage of seats in medical college or colleges within that region. The Apex Court observed that there may be large number of students who, if they do not get admission in medical colleges near their residence on the basis of relative merit, may not be able to list other medical college on account of lack of reservation and facilities and they would be effectively deprived of real opportunity of pursuing medical course and that the opportunity

for medical education provided to them would be illusory. The Court was also conscious of some difficulty in case of girls because if they are not able to get admission in the medical college near the place where they reside. They may find it difficult to pursue medical education in the medical college in any region where hostel facilities may not be available and even if hostel facilities are available the parents may hesitate to send them to hostel.

In that case, the Apex Court was also of the view that 100% regional reservation was unconstitutional and it also held that it would not be unconstitutional if the State provides for reservation or preference in respect of certain percentage of seats.

21. The judgment in case of **Nidamarti Maheshkumar Vs. State of Maharashtra and others** (*supra*) was delivered in the year 1986. Times have changed. The means of accessibility and transportation has eased. With the globalisation and advancement of technology the world has become small place to

live in. The means of communication have improved. The difficulty expressed by the Apex Court in paragraph no.7 of the judgment of **Nidamarti Maheshkumar Vs. State of Maharashtra and others** (*supra*) would not be existing now with same degree. The law is a dynamic concept. The change is inevitable. The law would change with the changing times, changing circumstances and changing environment. It would not be unconstitutional in doing away with regional reservation. No constitutional mandate would be violated if regional reservation is not provided.

22. This takes us to the next contentions of the procedure contemplated under Sub Section 2 of Section 23 not adhered to.

23. The learned Counsel for the petitioners laid much emphasis upon non adherence to the procedure prescribed under Sub Section 2 of Section 23. Sub Section 2 of Section 23 requires every rule made under the Act to be laid as soon as may be after it is made, before each house of State

Legislature, while it is in Session for a total period of 30 days, which may be comprised in one Session or two or more successive Sessions and if before the expiry of the Session in which it is so laid or the Session or Sessions immediately following, both the houses agree in making any modification in the rule or both the houses agree that the rule should not be made and notified the decision to that effect in the official gazette, the rule shall from the date of publication of such a decision in the official gazette have effect only in such modified form or be of no effect as the case may be so; however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

24. It was submitted by the learned Senior Advocate for the State that the house was in Session only for 2 days because of Covid-19 pandemic i.e. 07.09.2020 and 08.09.2020. It was not in Session for a period of 30 days. We asked the learned Senior Advocate for the State whether

the Rules-2016 providing for 70% regional reservation were placed before both the houses of the State Legislature. The learned Senior Advocate candidly replied that the Rules-2016 were also not laid before both the houses. The learned Senior Advocate on behalf of the State assures this Court that Rules-2016 and Amendment Rules-2020 would be placed before the house in the next Session.

25. Sub Section 2 of Section 23 does not require the State Legislature to give its approval for bringing into effect the notification. The requirement of laying down the rules before the houses of the State Legislature under Sub Section 2 of Section 23 does not provide for affirmative procedure. The notification comes into effect by publication in the gazette before it is laid before the houses. Sub Section 2 of Section 23 does not require approval of the house before implementation of the rule as it is. It is only for the modification of the rule or that if the house agrees that the rule shall not be made then only the house is required to notify their

decision to that effect in the official gazette and the rule shall from the date of publication of such decision in the official gazette would have effect only in such modified form or be of no effect as the case may be.

26. If the house does not suggest any modification or that it does not want that the rule should not be made then their decision is not required to be published in the official gazette so as to have effect from the date of publication of such decision. Section 23(2) does not prescribe that the rules acquire validity only from the date on which they were placed before both the houses of the State Legislature. Failure to place the rules before the houses of the State Legislature would not affect the validity of the rules. Section 23 (2) further provides that any such modification, or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule. This phraseology further strengthens the inference that the laying requirement in Sub Section 2 of Section

23 does not provide for affirmative procedure but only negative procedure.

In view of the above, it cannot be said that Amendment Rules-2020 are not operative.

27. The contention of the petitioners that Amendment Rules-2020 are made operative retrospectively do not appear to be proper. Before the conduct of the NEET examination the rules are amended. Moreover, amended rules do not affect the prospects of the students in whatsoever manner. The basis of admission to the medical course is the merit alone achieved by the students in NEET examination. No student can claim right to possess regional reservation. The marks obtained in H.S.C. examination carry no weightage for medical admission. In light of the above, the arguments of the petitioners that the amendment Rules-2020 applied retrospectively would not hold water.

28. In light of the aforesaid discussion, the challenge to the Amendment Rules-2020 fails.

29. Rule is accordingly discharged.

30. The writ petitions are dismissed. No costs.

31. All the civil applications are also disposed of.

[SHRIKANT D. KULKARNI, J.][S. V. GANGAPURWALA, J.]

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