

Dr. Pradeep Jain and Others

Vs

Union of India and Others

Miss Reita Nirankari

Vs

University of Delhi

Meenakshi

Vs

Union of India

Alka Aggarwal

Vs

Union of India

Shalini

Vs

Union of India and Another

Writ Petitions Nos. 6091, 8882-83, 9219 and 9820 of 1983, Civil Appeal No. 6392 of 1983

(P. N. Bhagwati, A. P. Sen, Ranganath Misra JJ)

22.06.1984

JUDGMENT

BHAGWATI, J.

1. (for himself, A. N. Sen and Ranganath Misra, JJ.) - This group of writ petitions raises a question of great national importance affecting admissions to medical colleges, both at the under graduate and at the post-graduate levels. The question is, whether, consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a state can be confined to those who have their 'domicil' within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess 'domicil' or residential qualification within the State, irrespective of merit. This question has assumed considerable significance in the present day context, because we find that today the integrity of the nation is threatened by the divisive forces of regionalism, linguism and communalism and regional linguistic

and communal loyalties are gaining ascendancy i

2. The history of India over the past centuries bears witness to the fact that India was at no time a single political unit. Even during the reign of the Maurya dynasty, though a large part of the country was under the sovereignty of the Maurya Kings, there were considerable portions of the territory which were under the rule of independent kingdoms. So also during the Moghul rule which extended over large parts of the territory of India, there were independent rulers who enjoyed political sovereignty over the territories of their respective kingdoms. It is an interesting fact of history that India was forged into a nation neither on account of a common language nor on account of the continued existence of a single political regime over its territories but on account of a common culture evolved over the centuries. It is cultural unity - something more fundamental and enduring than any other bond which may unite the people of a country together - which has welded this country into a nation. But, until the advent

3. The Preamble of the Constitution was, therefore, framed with the great care and deliberation so that it reflects the high purpose and noble objective of the Constitution makers. The Preamble declares in highly emotive words pregnant with meaning and significance :

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

These words embody the hopes and aspirations of the people and capture and re[produce the social, economic and political philosophy underlying the Constitution and running through the warp and woof of its entire fabric. It is significant to note that the Preamble emphasizes that the people who have given to themselves this glorious document are the people of India, the people of this great nation called India and it gives expression to the resolve of the people of India to constitute India into a sovereign socialist secular democratic republic and to promote among all its citizens fraternity assuring the dignity of the individual and the unity and the unity and integrity of the nation. The Constitution makers were aware of the past history of the country and they were also conscious that the divisive forces of regionalism, linguism and communalism may one day raise their ugly head and threaten the unity and integrity of the nation, particularly in the context of the partition of India and the ever present danger

Article 14. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15. - (1) The State shall not discriminate against any citizen on grounds only

of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens of for the Schedules Castes ad the Schedules Tribes.

Article 19(1) again recognises the essential unity and integrity of the nation and reinforces the concept of one nation by providing in clause (d) and (e) that every citizen shall he the right to move reply throughout the territory of India and reside and settle in any part of the territory of India. Article 301 declares that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Then there are situations envisaged in certain articles of the Constitution such as Articles 353 and 356 where the executive power of a State forming part of the Union is exercisable by the Central Government or subject to the directions of the Central Government. Thus, the entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and pressuring the unity and integrity of the nation. Now if India is one nation and there is only one citizenship, namely, citizenship of India,

4. But, unfortunately, we find that in the law few years, owing to the emergence of narrow parochial loyalties fostered by interested parties with a view to gaining advantage for themselves, a serious threat has developed to the unity and integrity of the nation and the very concept of India as a nation is in peril. The threat is obtrusive at some places while at other it is still silent and is masquerading under the guise of apparently innocuous and rather attractive claptrap. The reason is that when the Constitution came into operation, we took the sprit of nationhood for granted and aid little attention to nourish it, unmindful of the fact that it was a hard-won concept. We allowed 'sons of the soil' demands to develop claiming special treatment on the basis of residence in the concerned State, because recognising and conceding such demands had a populist appeal. The result is that 'sons of the soil' claims, though not altogether illegitimate if confined within reasonable bounds, are breaking asunder the

5. We may point out at this stage that though Article 15(2) bars discrimination on grounds not only of religion, race, caste or sex but also a place of birth, Article 16(2) goes further and provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in State employment. So far as employment under the State or any local or other authority is concerned, no citizen can be given preference nor can any

discrimination be practiced against him on the ground only of residence. It would thus appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State and having regard to the expansive meaning given to the word 'State' in *Ramana Dayaram Shetty v. International Airport Authority of India*, it is obvious that this constitutional prohibition would also cover an officer under any local or other authority within the State or oration or any other corporation which is an instrumentality or agency of the state. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petition and civil appeal.

6. But, it is clear that so far as admissions to an educational institution such as a medical college are concerned, Article 16(2) has no application, If, therefore, there is any residence requirement for admission to a medical college in a State, it cannot be condemned as unconstitutional on ground of violation of Article 16(2). Nor can Article 16(2) be invoked for invalidating such residence requirement because that article prohibits discrimination on ground of place of birth and not on ground of residence and, as pointed out by this Court in *D. P. Joshi v. State of Madhya Bharat*, residence and place of birth are "two distinct conception with different connotation both in law and in fact". The only provision of the Constitution in the touchstone of which such residence requirement can be required to be tested is Article 14 and that is precisely the challenge which falls to be considered by us in these writ petition.

7. Now there are in our country in almost all States residence requirements for admission to a medical college. Sometimes the requirement is phrased by saying that the applicant must have his domicile in the state. We must protest against the use of the word 'domicile' in relation to a State within the Union of India. The word 'domicile' is to identify the personal law by which an individual is governed in respect of various matters such as the essential validity of a marriage, the effect of marriage on the proprietary rights of husband and wife, jurisdiction in divorce and nullity of marriage illegitimacy, legitimation and adoption and testamentary and intestate succession to moveables. 'Domicile' as pointed out in *Halsbury's Laws of England* (fourth Edition) Volume 8, paragraph 421, "is the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as his personal law". It is well settled that the domicile of a person is in that country in which he either

8. Now it is clear on a reading of the Constitution that it recognises only one domicile, namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India". Moreover, it must be remembered that India is not a federal state in the traditional sense of that term. It is not a compact of sovereign states which have come together to form a federation by ceding a part of their sovereignty to the federal state. It has undoubtedly certain federal features but it is still not a federal state and it has only one citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails throughout the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at

9. We may now proceed to consider whether residential requirement or institutional preference in admissions to technical and medical colleges can be regarded as constitutionally permissible. Can it stand the test of Article 14 or does it fall foul of it and must be struck down as constitutionally invalid. It is not possible to answer this question by a simple "yes" or "no". It raises a delicate but

complex problem involving consideration of diverse factors in the light of varying social and economic facts and calls for a balanced and harmonious adjustment of competing interests. But, before we embark upon a consideration of this question, it may be pointed out that there is before us one civil appeal, namely, C. A. No. 6392 of 1983 filed by Reita Nirankari and five writ petitions, namely, Writ Petition Nos. 8882 of 1983, 8883 of 1983, 9618 of 1981, 10658 of 1983 and 10761 of 1983 filed by Nitin Aggarwal, Seema Garg, Meenakshi, Alka Aggarwal and Shalini Shailendra Kumar respectively. These civil appeal and wr

10. There can be no doubt that the demand for admission to medical colleges has over the last two decades increased enormously and outstripped the availability of seats in the medical colleges in the country. Today large numbers of young men and women are clamoring to get admission in the medical colleges not only because they can find gainful employment for themselves but they can also serve the people and the available seats in the medical colleges are not sufficient to meet the increasing demand. The proportion of medical practitioners to the population is very low compared to some other countries and there is considerable unmet need for medical services. It is possible that in highly urbanised areas, there may be a surfeit of doctors but there are large tracts of rural areas through-out the country where competent and adequate medical services are not available. The reason partly is that the doctors who have been brought up and educated in urban areas or how are trained in medical colleges situate in citi

11. This was the consideration which weighed with the Court in *Minor P. Rajendran v. State of Madras* in striking down a rule made by the State of Madras allocating seats in medical colleges on districtwise basis. Wanchoo, C.J. speaking on behalf of the Court, observed :

The question whether districtwise allocation is violative of Article 14 will depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a large number of candidates than seats available, selection has got to be made. The object of selection can only be to secure the best possible material for admission to alleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors. If that is the object, the argument on behalf of the petit

Then again in a. *Peeriakaruppan v. State of Tamil Nadu*, the same consideration prevailed with the Court in striking down the scheme of selection of candidates for admission to medical colleges in the State of Tamil Nadu for the year 1970-71. It was a unit-wise scheme under which the medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges in the Mofussil was constituted as a unit and a separate selection committee was set up for each of these units. The intending applicants were asked to apply to any one of the committees but were advised to apply to the committee nearest to their place of residence and if they applied to more than one committees, their applications were to be forwarded by the Government to only one of the committees. The petitioners who were unsuccessful in getting admission, challenged the validity of this unit-wise scheme and contended that the unit-wise scheme infringed Article 14 of the Constitution, inter alia, because the applicants of

We shall first take up the plea regarding the division of medical seats on unit-wise basis. It is admitted that the minimum marks required for being selected in some unit is less than in the other units. Hence prima facie the scheme in question results in discrimination against some of the applicants... Before a classification can be justified, it must be based on an objective criteria and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to medical colleges. That object cannot be satisfactorily achieved by the method adopted.

These two decisions do not bear directly on the question raised before us, namely, whether any reservation can be reservation can be legitimately made in admissions to medical colleges on the basis of residence requirement within the State or any institutional preference can be given to students who have passed the qualifying examination held by the same university. They deal with two specific instances of intra-State discrimination between citizens residing within the same State and strike down such discrimination as violative of Article 14 on the ground that it has no rational relation to the object of selection, namely, to get the best and most meritorious students and, in fact, tends to defeat such object. But, in taking this view, they clearly and categorically proceed on the basis of the principle that the object of any valid scheme of admissions must be to "select the best candidates for being admitted to medical colleges" and that if any departure is to be made "from the principle of selection on the

12. But let us understand what we mean when we say that selection for admission to medical colleges must be based on merit. What is merit which must govern the process of selection? It undoubtedly consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of the poor. We agree with Krishna Iyer, J. when he says in Jagdish Saran case : (SCC p. 778, para 21)

If potential of rural service or aptitude for rendering medical attention among backward people is a criterion of merit - and it, undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears - then, surely, belonging to a university catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases.

Merit cannot be measured in terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head in assessing the social value of a member of the medical profession. This is also an aspect which may, to the limited extent possible, be borne in mind while determining merit for selection of candidates for admission to medical colleges though concededly it would not be easy to do so, since it is a factor which is extremely difficult to judge and not easily susceptible to evaluation.

13. We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality. Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group

disabilities and promote collective quality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality; de jure equality must ultimately find its *raison d'être* in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer, J. in *Jagdish Saran case* (SCC p. 782, para 29) "weave those special facilities into the web of equality which in an equitable setting, provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity..... equality is not negated or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general principle, 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 of opportunity between those who are unequals.

14. There are, in the application of this principle, two considerations which appear to have weighed with the courts in justifying departure from the principle of selection based on merit. One is what may be called State interest and the other is what may be described as a region's claim of backwardness. The legitimacy of claim of State interest was recognised explicitly in one of the early decisions of this Court in *D. P. Joshi case*. The rule impugned in this case was a rule made by the State of Madhya Bharat for admission to the Mahatma Gandhi Memorial College, Indore providing that no capitation fee should be charged for students who are bona fide residents of Madhya Bharat but for other non-Madhya Bharat students, there should be a capitation fee of Rs. 1300 for nominees and Rs. 1500 for others. The expression 'bona fide resident' was defined for the purpose of this rule to mean inter alia a citizen whose original domicile was in Madhya Bharat provided he had not acquired a domicile elsewhere or a citizen

The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is an enquire a legitimate and laudable objective for a State to encourage education within its borders. Education is a state subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide Article 41.) The State has to contribute for the upkeep and the running of its educational institutions. We are in this petition concerned with a medical college, and it is well-known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would so order the educational system that the advantage of it would to some extent at least ensure for the benefit

It may be noted that here discrimination was based on residence within the State of Madhya Bharat and yet it was held justified on the ground that the object of the State in making the rules was to encourage students who were residents of Madhya Bharat to take up the medical course so that "some of them might, after passing out from the college, settle down as doctors and serve the needs of the locality" and the classification made by the rule had rational relation to this object. This justification of the discrimination based on residence obviously rests on the assumption that those who were bona fide residents of Madhya Bharat would after becoming doctors settle down and

serve the needs of the people in the state. We are not sure whether any facts were pleaded in the affidavits justifying this assumption but the judgment of Venkatarama Ayyar, J, shows that the decision of the majority Judges proceeded on this assumption and that was regarded as a valid ground justifying the discrimination made by the impu

15. We may point out that in Minor P. Rajendran case also, an argument was put forward on behalf of the State Government that if selection was made districtwise, those selected from a district were likely to settle down as practitioners in that district, so that the districts were likely to benefit from their training. But this argument was rejected by the Court and districtwise admission to medical colleges was struck down as constitutionally invalid. It is significant to note that the Court did not reject this argument as intrinsically irrelevant but the only ground on which it was rejected was that "it was neither pleaded in the counter-affidavit of the State nor had the State placed any facts or figures justifying the plea that students selected districtwise would settle down as medical practitioners in the respective districts where they resided". It would be interesting to speculate what the Court would have decided if the State Government had placed sufficient material before the Court showing that s

16. This Court also upheld reservation based on residence requirement for a period of not less than ten years, for admission to medical colleges in the then State of Mysore, in the subsequent decision in N. Vasundara case. The rule which was impugned in that case was Rule 3 of the Rules for selection of candidates for admission to the professional course leading to MBBS course in the Government medical colleges in the then State of Mysore and this rule provided that "no person who is not a citizen of India and who is not domiciled and resident in the state of Mysore for not less than ten years at any time prior to the date of the application for a seat, shall be eligible to apply". The petitioner's application for admission was rejected on the ground that she had not resided in the State for a period of ten years as required by Rule 3 and she consequently challenged the constitutional validity of that rule on the plea that it violated the right to equality guaranteed by Article 14. The challenge was however

If classification based on residence does not impinge upon the principle of equality enshrined in Article 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection for the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seems to be to attempt 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 foursome, to serve as doctors, the inhabitants of the State of Mysore. It is true that it is not possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State state after qualifying as doctors, they have indeed a fundamental right as citi

Here also reservation based on residence requirement of not less than ten years was held to be non-discriminatory though it denied equality of opportunity for admission to the medical colleges in the State to all those who did not satisfy this residence requirement. The Court took the view that the object of the State Government. The Court took the view that the object of the State Government in making such reservation based on residence requirement of not less than ten yeas was 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 the state". The principle of selection based on merit across the broad was thus allowed to be modify by the claim of State

interest in "providing broad-based medical aid to the people of the state" and reservation based on residence requirement of not less than ten years was upheld as a valid reservation. We find an echo of the same reasoning in the foll

The object of selection for admission to the Medical Colleges, considered in the background of the Directive Principles of State Policy contained in our Constitution, appears to be to select the best material from amongst the candidates in order not only to provide them with adequate means of livelihood, but also to provide the much needed medical aid to the people and to improve public health generally.

The claim of State interest in providing adequate medical service to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors has thus been regarded by the Court as a legitimate ground for laying down residence requirement for admission to medical college in the State.

17. We may also conveniently at this stage refer to the decision of this Court in D. N. Chanchala case. The reservation impugned in this case was university-wise reservation under which preference for admission to a medical college run by a university was given to students who had passed the PUC examination of that university and only 20 per cent of the seats were available to those passing the PUC examination of other universities. The petitioner who had passed PUC examination held by the Bangalore university, applied for admission to any one of the medical colleges affiliated to the Karnataka University. But she did not come within the merit list on the basis of which 20 per cent of the open seats were filled up and since she had not passed the PUC examination held by the Karnataka University. Her application for admission to a medical college affiliated to the Karnataka University was rejected. She therefor filed a writ petition under Article 32 of the Constitution contending inter alia that the university

The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centers for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in those area, it can safely be presumed that they also were so set up to satisfy ns, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decided the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rule laying down such sources cannot be successfully challenged (see Chitra Ghose v. Union of India). In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished class from those passing through such examination from the other two universities. Such a class

18. The second consideration which as legitimately weighed with the courts in diluting the principle of selection based on merit is the claim of backwardness made on behalf of any particular region. There have been cases where students residing in a backward region have been given preferential treatment in admission to medical colleges and such preferential treatment has been upheld on the ground that though apparently discriminatory against others, it is intended to correct the imbalance or handicap from which the students from the backward region are suffering and thus bring about real equality in the larger sense. Such preferential treatment for those residing in the backward region is designed to produce equal opportunity on a broader basis by providing to neglected geographical or human areas an opportunity to rise which they would not have if no preferential treatment is given to them and they are treated on the same basis as others for admissions to medical college, because then they would never be able

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

This was precisely the ground on which, in the state of Uttar Pradesh v. Pradip Tandon this Court allowed reservation in medical admission for people of the hill and Uttarakhand areas of the state of U. P. on the ground that these areas were socially and educationally backward. Similarly, the Andhra Pradesh High Court in Nookavarapu Kanaka-durga Devi v. Kakatiya Medical College, held that preferential treatment of Telangana students in medical admissions was justified since

... Kakatiya Medical College was started for the spread of medical education mainly for Telangana region, which is educationally backward in the state., If in view of this object provision is made to cater to the educational needs, mainly of that particular region, as it badly required such assistance, it cannot be said that the object to be achieved has no relation to the classification made by giving larger representation to the Telangana region and lesser representation to the Andhra region. The increase in the Telangana quota is consistent with and promotes and advances the object underlying the establishment of the institution.

We are however not concerned here with a case of reservation of reference for persons from backward region within a State and we need not therefore dwell any longer upon it.

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 and large been frowned upon by the Court and struck down as invalid as in minor P. Rajendran case and Peeria- Karuppan case, the Court has in D. N. Chanchala case and other similar cases upheld 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 case and N. Vasundara case sustained the constitutional validity of reservation based on residence requirement within a State for the purpose of admission to medical colleges. 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 a State for admission to MBBS course is irrational and irrelevant and cannot be introduced as a condition for admission without vi

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 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 of preference for a reasonable quantum in undergraduate 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 State Board and schools affiliated to CBSE.

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 admission to the MBBS 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.

20. The only question which remains to be considered is as to what should be the extent of reservation based on residence requirement and institutional preference. There can be no doubt that such reservation cannot completely exclude admission of students from other universities and state on the basis of merit judged in open competition. Krishna Iyer, J. rightly remarked in Jagdish Saran case at page 845 and 846 of the Report : [SCC p. 778, para 22].

... reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. So, a certain percentage, which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the county for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the alter of equalisation - when the Constitution mandates for every one equality before and equal protection of the law - may be fatal folly, self-defeating educational technology and anti-national if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential the weak with the partial recognition of the presence of competitive merit - such is the dynamics of social justi

We agree wholly with these observations made by the learned Judge and we unreservedly condemn wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution.

21. But, then to what extent can reservation based on residence requirement within the State or on institutional preference for students passing the qualifying examination held by the university or the State be regarded as constitutionally permissible ? It is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of the Government of India, the extent of such reservation 'would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of education in that particular area, the extent of competition, level of educational development of the area and other relevant factors". It may be that in a State where the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical speciality and there is large scale social and economic backwardness, there may be justification for reservation of a higher percentage of seats in the me

22. So much for admission to the MBBS course, but different consideration must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the post-graduate courses, such as, MD, MS and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Jagdish Saran case, and we wholly endorse what he has said :

The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where intentional measure of talent is made, where losing one great scientist or technologist in- the-making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has ore meaning and cannot be diluted much without grave risk. [SCC pp. 778-79, para 23]

* *##

If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital filed like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exa

* *##

Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for postgraduate or post-doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say is hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post- doctoral. [SCC p. 786, para 44]

These passages from the judgment of Krishna Iyer, J. clearly and forcible express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out merit, so far as admissions to post-graduate courses are concerned, for

pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration :

Student for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under graduate course. All selection for post-graduate studies should be conducted by the Universities.

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located". So also in the policy statement filed by the learned Attorney-General, the Government of India has categorically expressed the view that :

So far as admission to the institutions of post-graduate colleges and special professional colleges in concerned, it should be entirely on the basis of all-India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes.

We are therefore of the view that so far as admissions to post- graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference, But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the presents circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any even exceed 50 per cent of the total number of open seat

23. What we have said about in regard to admissions to the MBBS and post-graduate courses must apply equally in relation to admissions to the BDS and MDS courses. So far as admissions to the BDS and MDS courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given by us to the Indian Medical council in regard to admission to MBBS and post-graduate courses. The directions given by us to the Indian Medical Council may therefore be read as applicable mutatis mutandis to the Indian Dental Council so far as admission to BDS and MDS course are concerned.

24. The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories. We may point out that it is not necessary for us to give any further directions in these writ petitions in regard to the admissions of the petitioners in the writ petitions, because the academic term for which the admissions were sought has already expired and so far as concerns the petitioners who have already been provisionally admitted, we have directed that the provisional admissions given to them shall not be disturbed but they shall be treated as final admissions. The writ petitions and the civil appeal will accordingly stand disposed of in the above terms. There will be no order as to costs in the writ petitions and the civil appeal.

AMARENDRA NATH SEN, J. [supplementing] ♦

I have had the advantage of reading the judgment of my learned brother, Bhagwati, J. I agree with the orders passed by my learned brother and also the directions given by him. I, however, propose to indicate in brief my down reasons.

26. My learned brother in his judgment has referred to various aspects of national life and has very aptly emphasised on the need of unity of India. My learned brother in his judgment has set out the relevant facts and circumstances and has also considered the relevant decisions on the question involved in the present proceedings.

27. Unity in diversity in the essential peculiarity of Indian culture and constitutes the basic philosophy of Indian nationality. It is also a fundamental tenet of our Constitution which seeks to promote the unity while maintaining at the same time the distinctiveness of the various classes and kinds of people belonging to different States forming the Indian Nation. Equality in the eye of law is the fundamental postulate and is guaranteed under the Constitution. Each and every kind of discrimination is not in violation of the constitutional concept of equality and does not necessarily undermine the unity of India. The validity of any discrimination has to be tested on the touchstone of Article 14 of the Constitution. Appropriate classification may in very many cases form the very core of equality and promote unity in the true sense amidst diversity.

28. To my mind the questions involved in these proceedings lie within a short compass. The first question relates to reservation of seats for admission to medical colleges in any State on the basis of residence of the applicant in the State for such admission. Connected with this question is the question of institutionalised reservation of seats for admission to medical colleges. The other question raised is the question of reservation of seats on such considerations for admission to post-graduate medical courses.

29. The question of constitutional validity of reservation of seats within reasonable limits on the basis of residence and also the question of institutionalised reservation of seats clearly appear to be concluded by various decisions of this Court, as has rightly been pointed out by my learned brother in his judgment in which he has referred at length to these decisions. These decisions are binding on this Court and are to be followed. Constitutional validity of such reservations within the reasonable limit must, therefore, be upheld.

30. The real question is the question of the extent of [sic or] the limit to which such reservations may be considered to be reasonable. The question of reasonableness of such reservations must necessarily be determined with reference to the facts and circumstances of particular cases and with reference to the situation prevailing at any given time. My learned brother in his judgment has elaborately and carefully considered these aspects. On a careful consideration of all the facts and circumstances and the materials placed, my learned brother has proposed appropriate orders and has given necessary directions in this regard. The orders passed by my learned brother and the directions in this regard. The orders passed by my learned brother and the directions given by him on a consideration of the materials on record and the earlier decisions of this Court will serve the cause of justice, meet the requirements of law and will not affect or undermine national unity. I am, therefore, in entire agreement with the

31. On the question of admission to post-graduate medical course I must confess that I have some misgivings in my mind as to the further classification made on the footings of super-specialities.

Both my learned brothers, however, agree on this. Also in a broader perspective this classification may serve the interests of the nation better, though interests of individual States to a small extent may be affected. This distinction in case of super-specialities proceeds on the basis that in these very important spheres the criterion for selection should be merit only without any institutionalised reservations or any reservation on the ground of residence. I also agree that the orders and directions proposed in regard to admission to MBBS and post-graduate course are also to be read as applicable mutatis mutandis in relation to admission to BDS and MDS courses.

32. The problem of admission to medical colleges and post-graduate medical studies can only be properly and effectively solved by the setting up of more medical colleges and by increasing the number of seats in such colleges to enable aspirants to have their aim of being qualified as medical practitioners and specialists in various subjects achieved. The same is also the position with regard to BDS and MDS course. This aspect has been very appropriately noticed by my learned brother in his judgment.

33. With these observations I agree with the orders passed and the directions given by my learned brother Bhagwati, J.

</html