**ANDHRA PRADESH HIGH COURT**

Nookavarapu Kanakadurga Devi

Vs.

Kakatiya Medical College

Writ Petn. No. 3065 of 1970

(Sharfuddin Ahmed and Vaidya, JJ.)

24.11.1970

**JUDGMENT**

**Vaidya, J.**

1. The petitioner is a woman student who had applied for admission to the Kakatiya Medical College, a college, run by the Regional Medical Education Society, Warangal in the first year M.B.B.S. of the five-and-half year integrated course. The petitioner was born at Vijayawada on the 10th June 1951 and in 1954 she along with her mother started living with her maternal grandfather, Lingam Venkaiah, at Kundanapalli in Adilabad District. The grandfather was working as a contractor with M/s. Sashikant Karsonji and Co. from 1954 to 1959. From the year 1959 onwards till 1962 he had been working as a contractor to the Singareni Collieries Company at Mandamarri and Ramagundam. The petitioner was born at Vijayawada when her maternal grand-father was living there. It is stated the maternal grandfather is living in Telangana from 1954 onwards as stated above. The petitioner and her mother moved from Vijayawada to Telangana along with her grand-father as the petitioner's father, Nagabhushana Rao, had, by the year 1954, ceased to take any interest in the petitioner or her mother. In the year 1962, the grandfather purchased 10 acres of cultivable land at Kundanapalli near Ramagundam and constructed a house in the same place in the year 1968 and thus settled down at Kundanapalli in Karimnagar District. The grand-father has been acting as the guardian and caretaker of the petitioner from her childhood. The grand-father who was previously a school teacher under the Krishna District Board got the petitioner educated at home upto 1961. In the year 1961, he got the petitioner admitted into the 5th standard at Mandamarri Zilla Parishad Middle school where the petitioner studied upto the year 1963. As there was no 8th class at Mandamarri and as the grand-father was anxious to get the petitioner admitted in a Montessori School, he got her admitted into the Children's Montessori High School, Vijayawada, in 1963. The petitioner studied in that high school upto 1967, when she passed her S.S.L.C. Public Examination. During this period the petitioner was staying at the hostel attached to the High School and was being maintained and looked after by her grandfather. After finishing her S.S.L.C. the petitioner joined the Raja Bahadur Venkatrama Reddy Women's College, Hyderabad, and studied Pre-University course during 1967-69 and passed the P.U.C examination in second division in December, 1969. It is stated in the affidavit that it is on the basis of the aforesaid facts that the petitioner applied to

the Principal, Kakatiya Medical College, Warangal, for admission into the first year integrated M.B.B.S. course for the year 1969-70. It is averred that her application was accompanied by all the necessary certificates including the Domicile Certificate issued by the Collector, Karimnagar, and a certificate issued by the M.L.A. of that place testifying to the fact that the petitioner's grandfather had lived for a total period of 15 years in that place. The petitioner paid all the fees and was admitted to the entrance examination with her Roll No.255, but she was rejected admission into the medical college through a communication dated the 4th June, 1970 sent by the Principal of that College. The aforesaid communication states that the evidence produced by the petitioner on the 6th April, 1970 in support of her nativity of 15 years residence in Telangana region was not fully convincing to the Selection Committee and therefore her application for admission into the M.B.B.S. course was rejected.

2. The petitioner contends that the Selection Committee was wholly wrong in coming to the conclusion that the petitioner had not the domicile of 15 years in the Telangana area. There was a domicile certificate issued by the District Collector, Karimnagar, and a certificate issued by the local M.L.A. The fact that the petitioner studied in Zilla Parishad Middle School, Mandamarri, was borne out by public record and that the petitioner's grand-father, Venkaiah, worked as a contractor from 1954 to 1962 in that area was borne out by the relevant documents. It was also shown to the Selection Committee that during the entire period from 1954 to 1970 the petitioner was being educated at the cost of her grand-father. It is contended that the rule of the society that there shall be 15 years of residence in Telangana area for claiming admission into the college is wholly arbitrary, unconstitutional and unreasonable. It is a clear denial of equality before the law guaranteed to the petitioner who is a citizen of India. "The Kakatiaya Medical College is being run with the aid and help of the State of Andhra Pradesh and at the cost of the public exchequer and is being managed by the Government officials like the District Collector, Warangal. Such an institution discharging public functions like imparting of medical education cannot act in violation of the fundamental rights declared by the Constitution." The petitioner prayed for a writ of mandamus or any order or direction directing the respondents to admit the petitioner into the first year integrated M.B.B.S. course at Kakatiya Medical College, Warangal.

3. The case of the 1st respondent is that the last date for filing of applications for admission to the first year integrated M.B.B.S., course was 2nd March, 1970. The petitioner had not, along with her application, submitted the conduct certificate, transfer certificate, physical fitness certificate and nativity certificate, and she was asked to do so on or before 2nd March, 1970. On the 3rd March, 1970, the petitioner produced the certificates referred to above. The nativity certificate she produced was granted by the Personal Assistant to the Collector of Karimnagar and is dated the 3rd March, 1970. The Selection Committee was not satisfied with the nativity or the domicile certificate produced by the petitioner and she was interviewed on the 26th March, 1970 and was directed to produce on the 6th April, 1970, evidence to prove her domicile. On the 6th April, 1970 in addition to the domicile certificate produced by the petitioner, she produced two certificates one issued by the Sarpanch of Kundanapalli Panchayat dated the 2nd April 1970 and the other by the Patwari of the same village dated the 24th January, 1970. Both the aforesaid certificates are in the same terms and state that for the last 16 years Kumari Kanakadurga Devi has been studying under the Protection of her grand-father. Sri Lingam Venkaiah at Kundanapalli. The other certificates referred to in the writ petition and copies of which have been filed before us were not produced before the Selection Committee. The certificate given by the M.L.A. Myadaram is dated the 9th April, 1970 and has evidently been obtained after the

interview of the petitioner with the Selection Committee on the 6th April, 1970. The certificates given by the engineering contractors. Messrs. Shashikant Karsonji and Co., and the one given by the Deputy General Manager of the Singareni Collieries Co. Ltd., were also not produced before the Selection Committee. It is averred that the Selection Committee on the basis of the evidence produced by the Petitioner was not satisfied that the petitioner was a resident of the Telangana Region. The Selection Committee has observed that the petitioner joined in 1961 the Mandamarri Zilla Parishad Middle School, but there was no evidence that the petitioner's elementary education took place in the Telangana region. It was not stated to the Selection Committee that the petitioner was educated by her grandfather at home, and that she had not joined any school till the year 1961. It was also not stated in the letter addressed by the grand-father of the petitioner to the Principal of the college on the 20th April, 1970. It was stated for the first time in the writ petition that the petitioner was educated privately by her grand-father up to 1961. Further, it was not stated before the Selection Committee that the father of the petitioner had deserted her and her mother and because of such desertion, they were living with the petitioner's grand-father. This statement was made for the first time in the letter of the petitioner's grand-father dated the 20th April, 1970. It is, therefore, contended that as there was no evidence worth the name before the Selection Committee for establishing the residence of the petitioner between 1954 and 1961, the Selection Committee rightly came to the conclusion that the petitioner did not have the necessary domicile of 15 years in the Telangana region.

4. As regards the contention of the petitioner that equality before the law guaranteed to the petitioner has been violated by the 15-year domicile rule, it is contended that Article 14 of the Constitution is not applicable to the society as it is not within the definition of "State" in Article 12 of the Constitution. It is further contended that assuming that Article 14 is applicable, admission on the basis of regional domicile does not in any manner infringe Article 14 or any other Article of the Constitution and is a reasonable classification. In view of the object of the Society to impart medical education to the residents of the Telangana region, 140 of the seats were reserved for the Telangana region and 10 for candidates from outside Telangana region including other States in India and foreign countries. Considering the object for the formation of the Society and the establishment of the college, it cannot be said that the reservation of 90 per cent. seats to the candidates having a domicile in the Telangana Region is unreasonable or not warranted under Article 14 of the Constitution. It is also contended that no Writ of Mandamus can be issued to the Society or the Principal of the Medical College or its Selection Committee under Article 226 of the Constitution as it is a private organisation on which no public duty is cast by any law, and that there is no right in the petitioner which can be enforced by a writ of mandamus or any other writ, direction or order of that nature.

5. The learned counsel for the petitioner raised before us the following contentions: (1) The Regional Medical Educational Society is a "State" within the meaning of Article 12 of the Constitution. (2) The rule of 15 years domicile in Telangana Region for admission to the Kakatiya Medical College contravenes Article 14 of the Constitution. (3) The Selection Committee having asked the petitioner to appear at the entrance examination had no jurisdiction to question the domicile of the petitioner. (4) The Selection Committee has not given any reasons for disbelieving the evidence produced by the petitioner in proof of the domicile of 15 years in the Telangana Region. (5) The evidence produced by the petitioner was sufficient for any reasonable man to reach the conclusion that the petitioner had the necessary domicile.

6. The society's constitution has not been set out in the affidavit filed by the petitioner except saying that the medical college is being run with the aid and help of the State of Andhra Pradesh and at the cost of the public exchequer and is being managed by the Government officials like the District Collector, Warangal. The constitution of the Society was referred to us by reading a paragraph from the decision in *Jaya Sri v. Kakatiaya Medical College*[1], The Regional Medical Educational Society is a Society registered under the Societies Registration Act, 1350-F, and is a legal person. It is a legal person brought into existence for fulfilling a public purpose, namely imparting medical education to all those who satisfy the requirements of their rules. It has as its members under Rule 2(c) ex-officio, subject to their consent, the Minister of Medicine and Public Health, and the Education Minister of the Government of Andhra Pradesh, the Chairman of the University Grants Commission and the Vice-Chancellor of the Osmania University. Apart from that, the Executive Committee further consists of ex-offlcio members who are Government servants, the President of which is the Collector of the District. They are also run on public donations. The hospital attached to the medical college is the Government Hospital known as Gandhi Hospital at Warnagal. It has to satisfy the requirements of All India Medical Council, and the Osmania University has to approve not only the academic qualification of the teachers but also the curricula etc. On the strength of this it is argued that the Society which has, as its members, Ministers of the Government of Andhra Pradesh, the Chairman of the University Grants Commission and the President of the Executive of which is the Collector of the District, which is State-aided and which has the Government Hospital attached to the medical college is within the definition of "State" in Article 12. The definition of "State" in Article 12 is not an exhaustive definition, but is only enumerative and takes in all the agencies or institutions which are within the natural tenor of the word "State." The definition reads:- In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." It is argued that the definition of "State" in Article 12 is not restricted to the Government and Parliament of India, the Government and the Legislature of each of the States and all local or other authorities, but includes other agencies and societies which do not come within the ambit of "other authorities." It is argued that the State has to discharge the function of imparting education as is evident from Article 45 of the Constitution of India. From Article 29(2) also, it is clear that an educational institution receiving aid out of the State funds attracts the fundamental rights guaranteed to a citizen of India. There are also indications in Part III of the Constitution dealing with fundamental rights that it is not only the "State" as is commonly understood, meaning thereby the Government or the Executive of the State, but also private citizens to whom writs, directions or orders can be issued for the enforcement of the fundamental rights. In this context, reference can be made to Articles such as 17, 23, 24 etc. If the State is involved to a significant extent in the carrying out of any particular activity, that activity can be termed as "State" activity in

[1](1967) 1 Andh WR 247 at p.253

order to attract the provisions of Part III of the Constitution of India. Further, the Society has been carrying on the functions of the Government to wit, imparting of education and therefore it is a Governmental agency or an instrumentality of the State, and consequently subject to all the constitutional limitations the State is subject to. It cannot be said that the Society is merely a private institution. The involvement of the State in the Society is evident from the fact that it has as its members, two Ministers of the Government of Andhra Pradesh. The Collector of the District and other officials have a voice in the administration of the Society and the college, and it receives State aid for the running of the medical college. In addition to all this, the most

important facility without which a medical college cannot function is the availability of a hospital provided for by the State, namely, the Gandhi Memorial Hospital is attached to the Medical College.

7. In support of the contention that the involvement of the State in a public activity is sufficient for constituting that activity as a State activity and attracting the equal protection clause of the fourteenth Amendment of the American Constitution, the learned counsel relied upon certain decisions which we will presently refer to. The material part of the Fourteenth Amendment of the American Constitution reads:-

> "..... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. The first decision which was brought to our notice in *Burton v. Wilmington Parking Authority*[2], The defendant, a Private Corporation, as lessee, operated a restaurant in an automobile parking building owned and operated by the lessor, the Wilmington Parking Authority an agency of the State of Delaware. The restaurant refused to serve the appellant food or drink solely because he is a Negro. It was contended by the appellant that such a refusal abridged his rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution. The authority which had leased out the premises to the respondent was created by the City of Wilmington pursuant to 22 Del Code. Sections 501-515. It is "a public body corporate and politic exercising public powers of the State as an agency thereof." Section 504. Its statutory purpose is to provide adequate parking facilities for the convenience of the public and thereby relieve the "parking crisis, which threatens the welfare of the community." Section 501(7), (8). To achieve this purpose the authority is granted wide powers including that of constructing or acquiring by lease, purchase or condemnation, lands and facilities, and that of leasing "portions of any of its garage buildings or structures for commercial use by the lessee, where, in the opinion of the Authority, such leasing is necessary and feasible for the financing and operation of such facilities." Section 504(a). The property owned or used by the authority is exempt from State taxation. It was observed at page 50 that:-

> "Private conduct abridging individual rights does no violence to the Equal Protection Clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it ..... Only by sifting facts and weighing circumstances can the non-obvious involvement of the State in Private conduct be attributed its true significance."

[2](1961) 6 L Ed 2d 45

The State involvement was considered at page 51 of the report. It was stated:

> "The land and building were publicly owned. As an entity, the building was dedicated to "public uses" in performance of the Authority's "essential governmental functions." 22 Del Code. Sections 501, 514. The costs of land acquisition, construction, and maintenance are defrayed entirely from donations by the City of Wilmington, from loans

> and revenue bonds and from the proceeds of rentals and parking services out of which the loans and bonds were payable. Assuming that the distinction would be significant, cf. *Derington v. Plummer*[3], the commercially leased areas were not surplus state property, but constituted a physically and financially integral and, indeed, indispensable part of the State's plan to operate its project as a self-sustaining unit. Upkeep and maintenance of the building, including necessary repairs, were responsibilities of the Authority and were payable out of public funds. It cannot be doubted that the peculiar relationship of the restaurant to the parking facility in which it is located confers on each an incidental variety of mutual benefits."

The restaurant is operated as an integral part of the public building devoted to a public parking service, indicated that degree of State participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn. It was stated at p.52:-

> "The State has so far insinuated itself into a position of interdependence with Eagle (restaurant) that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so "purely private" as to fall without the scope of the Fourteenth Amendment."

It was further observed:-

> "Because readily applicable formulae may not be fashioned, the conclusions drawn from the facts and circumstances of this record are by no means declared as universal truths on the basis of which every state leasing agreement is to be tested. Owing to the very "largeness" of Government, a multitude of relationships might appear to some to fall within the Amendment's embrace, but, that it must be remembered can, be determined only in the frame work of the peculiar facts or circumstances present."

In view of the involvement of the State in the activity of the Authority, the United States Supreme Court came to the conclusion that the private corporation also cannot violate the Equal Protection Clause of the Fourteenth Amendment of the American Constitution. It has to be noted in this case that the Authority which had leased the premises to the private corporation which was running the restaurant was created by a statute. By a statute it was created as a public body corporate and politic, exercising public powers of the State as an agency thereof. Its statutory purposes was to provide adequate parking facilities for the convenience of the public and thereby relieve the "parking crisis" which threatened the welfare of the community. Further the Act provided that the Authority can lease its property for the purposes of providing for the payment of the expenses of the Authority.

[3](CA 5 Tex) 240 F 2d 922, 925

9. The costs of land acquisition, construction and maintenance were being defrayed entirely from donations by the City of Wilmington, from loans and revenue bonds and from the proceeds of rentals and parking services out of which the loans and bonds were paid away. The involvement of the public in this authority was only to the extent of subscribing to the loans and revenue bonds which were repayable to the public from the rentals and parking services. From a reading

of this decision, it becomes clear that the Authority was created by the State and was run out of State funds and was created for a particular purpose laid down by the statute. It was a joint participant with the private corporation. It is in these circumstances that the learned Judges observed that the activity of a private corporation cannot infringe the Equal Protection Clause of the Fourteenth Amendment. The learned Judges also observed that whether a private corporation is within the ambit of the Equality Clause of the Fourteenth Amendment will have to be determined on the facts and circumstances of each case and no universal formulae can be designed for the purpose.

10. The next case referred to is *Evans v. Newton*[4], Our attention was drawn to a passage at page 377 which reads:-

> "Conduct that is formally "private" may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... That is to say, when private individuals or groups are endowed by the State with powers of functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations."
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> "In this case, the question whether a tract of land devised by a testator to be used as a park for white people only is subject to the command of the Fourteenth Amendment. The testator had devised to the City of Macon, Georgia, a tract of land to be used as a park for white people only providing in the will that the park should be under the control of a Board of Managers, all of whom have to be white. The city kept the park segregated for some years but in time let Negroes use it, taking the position that the park was a public facility which it could not constitutionally manage and maintain on a segregated basis. Thereupon, individual members of the Board of Managers brought the suit against the City and others asking that the City be removed as trustee and that the Court appoint new trustees, to whom title to the park may be transferred. Several negro citizens intervened, alleging that the racial limitation was contrary to the laws and public policy of the United States, and asking the Court to refuse to appoint private trustees. Thereafter the City resigned as trustee. Other heirs intervened asking for reversion of the testator's estate in the event that the Court refused to substitute new trustees to the city. The State Court accepted the resignation of the City as trustee and appointed three individuals as new trustees, finding it necessary to pass on the other claims of the heirs. On appeal by the Negro interveners, the Supreme Court of Georgia affirmed. On Certiorari the Supreme Court of the United States reversed. The majority of the Supreme Court held that the public character of the park required that it may be treated as a public institution subject to the command of the Fourteenth Amendment regardless of who presently had title under the State law.
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> Mr. Justice Douglas delivering the opinion of the Court observed at p.377.

[4](1966) 15 L Ed 2d 373

> "The range of governmental activities is broad and varied, and the fact that Government has engaged in a particular activity does not necessarily mean that an individual

> entrepreneur or manager of the same kind of undertaking suffers the same constitutional inhibitions. If a testator wanted to leave a school or center for the use of one race only and in no way implicated the State in the supervision, control, or management of that facility, we assume arguendo that no constitutional difficulty would be encountered."

Referring to the park in question, the learned Judge stated that it was an integral part of the City of Macon's activities. It was maintained by the City as a Public facility for whites only as well as granted tax exemption under the law. It had acquired the momentum as a public facility which certainly is not dissipated ipso facto by the appointment of private trustees. There was no change in the municipal maintenance and concern over this facility. From these facts, the conclusion was reached that the public character of the park required that it be treated as a public institution subject to the command of the fourteenth Amendment. The facts of this case also show that even though the land was devised by a private person and endowed to private trustees, the park was being administered by the City of Macon as public facility and was even granted tax exemption. It had formed the integral part of the City of Macon's activities. It, therefore, had assumed a public character which required that it be treated a public institution.

11. The aforesaid decisions do not lay down any general rule that a private institution or corporation is within the ambit of Article 12 of the Constitution of India if the State Government participates in the activities of such private institution or corporation in any manner. As already pointed out by us in (1961) 6 L Ed 2d 45 the authority was created by a statute and the building was constructed out of State funds. The expenses of the aforesaid authority were met out of the rent fetched by the property being leased out. The private corporation, the restaurant, was so intimately connected with the activities of the authority that the American Supreme Court thought that the private corporation was as much bound by the command of the Fourteenth Amendment as the Authority itself. What the learned Judges actually held was:-

> "When a State leases public property in the manner and for the purpose shown to have been the case here, the prescriptions of the Fourteenth Amendment must be complied with by the lessee as certainly as though they were binding covenants written into the agreement itself."

In the Second case in (1966) 15 L Ed 2d 373 the devise of the park was though by a private person, the park was maintained by the municipal authority as a public park and it was receiving care and attention from a public authority. It is because of this that the learned Judges held that the park had acquired a public character which required that it should be treated as a public institution.

12. In the instant case, the involvement of the State in the activities of the Society and the college is only to the extent of giving it a grant-in-aid and providing it with a facility of the hospital. The quantum of the aid given by the State is not known so that it may be determined what part it forms of the general donations of the Society or what part of the expenses of the college is borne by the State. Mere providing of the facility of a Government hospital to the college would not be such an involvement of the State as would make the Society or the College a "State" for the purposes of Article 12 of the Constitution of India. Merely because a few Ministers are members

of the Society and the Collector and other officers are members of the executive committee, it cannot be said that the State has undertaken the management of the Society or the College. There is nothing to show that the society or the college is an agency of the State, or that the Government has handed over to the Society or the college its function of imparting medical education. No doubt imparting of education is one of the functions of the State. But it cannot be said that private institutions cannot engage themselves in such an activity. There may be helpful co-operation between the State and the Society or the college, but to say that such a "helpful co-operation transforms the activities of the latter (society and the college) into State action, comes previously close to asserting that any State assistance to an organization which discriminates necessarily violates the Fourteenth Amendment" *Dorsey v. Stuyvesant Town Corporation*[5], A private individual or an institution is as much entitled as a State to impart education and medical education as for that; and merely because it does so, it cannot be said that such a private individual or an institution is within the definition of the "State" occurring in Article 12 of the Constitution of India.

13. Our Supreme Court in *Rajasthan State Electricity Board v. Mohan Lal*[6], considered the question whether the Rajasthan State Electricity Board was a "State" within the ambit of Article 12 of the Constitution of India. It was argued before the Supreme Court that the State Electricity Board was not within the expression "other authority" used in the same Article. While answering this argument, their Lordships held at p.1862:-

> "The expression 'other authorities' is wide enough to include within it every authority created by a statute and functioning within the territory of India or under the control of the Government of India and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution."

A reference was also made to the case of *Smt. Ujjam Bai v. State of Uttar Pradesh*[7], and the following passage was extracted:-

> "The words (other authorities) are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India. There is no characterisation of the nature of the "authority" in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in Order to implement those laws."

The Supreme Court observed:-

> "The expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

[5] 14 ALR 2d 133 at p.145
[6] AIR 1967 SC 1857
[7] (1963) 1 SCR 778 : AIR 1962 SC 1621

The aforesaid observation of the Supreme Court also does not help the petitioner as the Society or the college has not been created by the State.

14. A Division Bench of this Court in W.P. No. 3550 of 1968 and batch decided on 29-10-1968 (Andh Pra) had occasion to consider the question with reference to the Medical Education Society, Kakinada, and the Rangaraya Medical College, Kakinada. After reference of the decision of the Supreme Court and other decision referred to therein. Kumarayya, J. (as he then was) and one of us, held that the expression "other authority" in Article 12 includes

> (1) all bodies created by statute on which powers are conferred to carry out governmental and quasi-governmental functions
> (2) all constitutional or statutory authorities on whom powers are conferred by law and (3) all bodies created by State for the purpose of promoting educational and economic interests of the people. It was held that the Medical Educational Society and the Rangaraya Medical College were not within the definition of "State" and, therefore, the provisions of Article 14 of the Constitution did not apply to them. The same view was taken by the same Division Bench in W.P. No.3547 of 1968, D/d. 23-4-1968 (Andh Pra) which related to admission to the Kakatiya Medical College, Warangal. By reference to the earlier decision, it was held that the Kakatiya Medical College and the Regional Medical Education Society were not within the definition of "State" as defined in Article 12 of the Constitution. We do not find any reason to hold to the contrary. We, therefore, find that the Regional Medical Educational Society and the Kakatiya Medical College not being within the definition of "State", the provisions of Article 14 of the Constitution are not applicable.

15. Even assuming that Article 14 of the Constitution can be invoked by the petitioner in the instant case, we find that the reservation of 140 of the seats to the applicants who have a 15 year domicile in the Telangana region is based an a reasonable classification. It was argued by the learned counsel for the petitioner that the object of the Society and the college being to select the best students for imparting medical education any classification made on the basis of region is unreasonable and has absolutely no nexus to the object sought to be achieved. In support of this contention he relied upon two decisions of the Supreme Court in *P. Rajandran v. State of Madras*[8]. and *Minor A. Peeriakaruppan v. State of Tamil Nadu*[9], In Rajendran's case, Rule 8 of the Rules made by the State of Madras for selection of candidates for admission to the first year integrated M.B.B.S. course was challenged as infringing Article 14 of the Constitution. That Rule provided for district-wise distribution of seats according to population of the district. While dealing with the question, their Lordships said in para. 11:

> "The question whether district-wise allocation is violative of Article 14 will

[8] AIR 1968 SC 1012

[9] W.P. Nos.285 and 314 of 1970, D/d. 23-9-1970 : (reported in AIR 1971 SC 2303).

> depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a larger 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 colleges 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 petitioners appellant is that that object cannot possibly be served by allocating seats district-wise. It is true that Article 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, in as much as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources."

Our attention was specifically drawn to paragraph 12 of the judgment where the justification put forward on behalf of the State of Madras in support of the districtwise allocation was considered. It was said that there being better educational facilities in Madras City as compared to other districts of the State and therefore if district-wise selection is not made, candidates from Madras City would have an advantage and would secure many more seats than justified on the basis of proportion of the population of Madras City compared to the population of the State as a whole. In the opinion of their Lordships, this was no justification for district-wise allocation which results in discrimination even assuming that candidates from Madras City will get a larger number of seats in proportion to the population of the State. Their Lordships expressed themselves thus:

> "If the object is to attract the best talent, from the two sources, district-wise allocation in the circumstances would destroy that object. Further even if we were to accept this contention that would only justify allocation of seats between the city of Madras on one side and the rest of the State on the other and not a district-wise allocation throughout. But apart from this, we are of opinion that the object being what we have indicated, there is no reason why there should be discrimination which would go against the candidates from Madras City. We may add that candidates who pass from Madras City need not all be residents of the City for it is common knowledge that schools and colleges in the capital city attract students from all over the state because of better educational facilities."

Relying upon the aforesaid expression of opinion of their Lordships of the Supreme Court, Mr. Chowdary argues that a regional classification on the basis of Telangana and Andhra is also hit

by the provisions of Article 14 of the Constitution. According to him, the existence of more medical facilities in the Andhra region and lesser facilities in the Telangana region or that the Telangana region is educationally backward than the Andhra region, is no justification for reservation of seats for the Telangana region, the object of selection being to secure the best possible talent from the State.

16. In Writ Petns. Nos.285 and 314 of 1970, D/d. 23-9-1970 : AIR 1971 Supreme Court 2303 the unitwise selection introduced by the State of Tamil Nadu for admission to the Medical Colleges in the State was questioned as infringing Article 14 of the Constitution. Under the unitwise scheme, the medical colleges in the City of Madras were constituted as one unit and each one of the other medical colleges in the mofussil was constituted as a unit. Thus six units were created in the State. In respect of each one of the units a separate selection Committee was constituted. The intending applicants were asked to apply to any one of the Committees but they were advised to apply to the Committee nearest to their place of residence as far as possible. While dealing with the division of medical seats on unitwise basis, the earlier decision of the Supreme Court in Rajendran's case, AIR 1968 Supreme Court 1012 was referred to. It was contended on behalf of the State that the unitwise distribution of seats was adopted for administrative convenience as it was not possible for one Selection Committee to interview all the applicants. It was also stated that when selections were made by several Committees, there was delay in preparing a consolidated list. Their Lordships were unable to accept the aforesaid grounds as being the real grounds for classification. They again stressed:

> "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. The complaint of the petitioners is that unitwise distribution of seats is but a different manifestation of the districtwise distribution sought in 1967-68 has some force though on the material on record we will not be justified in saying that the unitwise distribution was done for collateral purposes. Suffice it to say that the unitwise distribution of seats is violative of Articles 14 and: 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Articles 14 and 15."

Here again whether the classification resulted in any discrimination was looked upon from the point of view of the object of selection of best candidates for imparting medical education. It was further held that the reasons given for the classification had no nexus with the object sought to be achieved.

17. The decision of the Supreme Court in Rajendran's case, AIR 1968 Supreme Court 1012 came up for consideration before the Supreme Court in *Chitra Ghosh v. Union of India*[10], In this case the reservation of seats in the Maulana Azad Medical College, Delhi in respect of categories (c) to (h) contained in Rule 4 of the College Prospectus relating to the eligibility for admission to the college, was questioned as violative of Articles 14, 15 and 29 of the Constitution. The Maulana Azad Medical College was established by the Government of India. The following categories of students only are eligible for admission.

[10] AIR 1970 SC 35

(a) Residents of Delhi. .....

(b) (i) Sons/daughters of Central Govt. servants posted in Delhi at the time of the admission.
(ii) Candidates whose father is dead and is wholly dependent on brother/sister who is a Central Government Servant posted in Delhi at the time of the admission.
(c) sons/daughters of residents of Union Territories specified below including displaced persons registered therein and sponsored by their respective Administration of Territory.
(i) Himachal Pradesh (ii) Tripura (iii) Manipur (iv) Naga Hills (v) N.E.F.A. (vi) Andaman.
(d) Sons/daughters of Central Government servants posted in Indian Missions abroad.
(e) Cultural scholars.
(f) Columbo plan Scholars.
(g) Thailand scholars.
(h) Jammu and Kashmir State Scholars.

The attack under Article 14 was on the ground that merit should be the sole criterion and as soon as other factors like those mentioned in Cls.(c) to (h) to Rule 4 are introduced, discrimination becomes apparent. Their Lordships, after referring to the ruling in *Ram Krishna Dalmia v. S.R. Tendolkar*[11], that Article 14 forbids class legislation; it does not forbid reasonable classification, went on to say at p.38:-

> "In other words to pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must have a rational relation to the object sought to be achieved. The first, group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so ..... Regarding Jammu and Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the state itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong."

In paragraph 9 of the judgment their Lordships have said:-

> "It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The

Government cannot be denied the right to decide from what

[11] AIR 1958 SC 538

sources the admission will be made. That essentially is a question of policy and depends inter alia on overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."

Their Lordships went on to determine whether the differentia on which classification has been made has a rational relation with the object to be achieved. Their Lordships observed at paragraphs 10 and 11.

"The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g. the Central Government in the present case. In AIR 1968 Supreme Court 1012 it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

The case of P. Rajendran AIR 1968 Supreme Court 1012 is clearly distinguishable because there the classification had been made district-wise which was considered to have no reasonable relation with object sought to be achieved." In our opinion, this decision of the Supreme Court affords a complete answer to the arguments advanced by the learned counsel for the petitioner in regard to the violation of Article 14 of the Constitution. The object of the Society in founding a medical college is to impart medical education to the students of a particular region which do not have the same educational facilities. According to the Supreme Court, if a Government bears the financial burden of running an institution, it is for it to lay down the criteria for eligibility. A fortiori this principle is applicable to a greater degree in the case of a private institution founded upon public donations to lay down the criteria for eligibility for admission to a particular region when the college is established for providing medical education for the students of that region. It is not possible for the Society to throw the admission open to students from all over the State of Andhra Pradesh or as a matter of fact for students from all over the country. It had to decide from what sources the admission will be made. That being so, reservation of 140 seats for the students who have a 15 year domicile in the Telangana region is a reasonable classification and it has the rational relation with the object to be achieved. The same view was taken by a Division Bench of this Court consisting of Kumarayya, J. (as he then was) and one of us in W.P. No.3547 of 1968, D/d. 23-4-1968 (Andh Pra). It was stated:

"It may be noted here that the 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 requires 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. Therefore, even if Article 14 had any application, it is obvious that the distinction made between the Telangana region and the Andhra region being reasonable having regard to its relationship with the object to be achieved, no constitutional inhibition can be attached thereto."

We may also point out that in Rajendran's case, AIR 1968 Supreme Court 1012 their Lordships had remarked:-

> "We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that districtwise classification which is being justified on territorial basis in these cases is violative of Article 14, for no justification worth the name in support of the classification has been made out."

18. We therefore, hold that reservation of 140 seats for the candidates from Telangana region is not violative of Article 14 of the Constitution of India.

19. The third contention of the petitioner is that the Selection Committee, having asked the petitioner to appear at the entrance examination, had no jurisdiction to question the domicile of the petitioner. It is argued that, before requiring the petitioner to appear for the entrance examination, the Selection Committee ought to have first considered the question of domicile and then only asked her to appear for the entrance examination. Haying asked her to appear for the examination, it can be easily presumed that the Selection Committee had no objection to her being a domicile from the Telangana region. Having made the petitioner believe that she was eligible for admission to the medical college from the Telangana region and on that basis having asked her to appear at the entrance examination, the authorities are now equitably estopped from questioning her domicile. In support of this contention reliance is placed on certain paragraphs of the prospectus issued by the college. It was pointed out that paragraph 3 of the prospectus speaks about the distribution of the seats in the college. The second note thereof says that the question whether a candidate is from the Telangana region will be considered by the Selection Committee on the basis of the nativity certificate. The said note goes on to say that the certificates shall not be treated as conclusive evidence of the necessary nativity of the candidate in the Telangana area for a continuous period of 15 years before the date of the application. The Selection Committee is empowered to call for further material evidence in proof of residence and the decision of the Selection Committee regarding residence shall be final. Then follows a paragraph in regard to the selection of the candidates. Clause (a) of sub-paragraph (2) of para 4 says that "the selection of candidates shall be made on the basis of merit as mentioned in the said sub-paragraph by Clause (b), a merit list for men and women candidates has to be prepared separately according to the aggregate marks obtained by the candidates in the optional science subjects in the Pre-University or H.S.C (Multipurpose) examination. By Clause (e) of this sub-paragraph, the Committee, if it

so desires, may hold an entrance written examination for all the applicants into the first year of M.B.B.S., in supersession of sub-paras (a), (b) ..... above. The Selection Committee evidently acted according to Clause (e) of sub-paragraph 2 of this paragraph and held the entrance examination to select candidates on the basis of merit.

20. Our attention is also drawn that, by Clause (b) of paragraph 8, the Principal is enjoined upon, before admission of a candidate to the college, to verify the correctness of the nativity certificate and of the marks statement produced by the candidate. It is argued that the scheme of admission as disclosed in the prospectus shows that the question of domicile of the candidate has to be decided first and then the entrance examination held. We do not see any force in this contention. There is nothing in the prospectus to show that the list of candidates based on merit cannot be prepared before examining their qualifications as to domicile. It is true that ordinarily the Selection Committee should have first examined the qualification of domicile and then asked the candidates to appear for the entrance examination. But there is no prohibition in the prospectus from holding the entrance examination prior to the decision on the domicile of an applicant. Evidently the Selection Committee asked all the candidates, who had applied stating that they had the domicile qualification, to appear at the entrance examination and examined the question of domicile only after the candidates could be included in the provisional list of selected candidates in accordance with the marks obtained by them at the entrance examination. Instead of examining the domicile qualification of all the applicants, the Selection Committee adopted this method so as to lessen the number of applications. We do not see anything in this which would go to the extent of affecting the jurisdiction or competency of the Selection Committee to examine the domicile of an applicant. The learned counsel for the petitioner relied upon a decision of this Court in *Ganganna v. Principal Andhra Medical College*[12], The question decided in this case was after the production of a nativity certificate given by the prescribed officer is prima facie accepted as correct and the selection is proceeded with on that basis, the scheme of selection and admission did not contemplate any enquiry as regards the correctness of the particulars given in the nativity certificate either by the Selection Committee or by the Government. This decision was arrived at after reference to G.O.Ms. No.1022, Health, dated the 30th May, 1957. In that G.O. no provision was made calling for documentary evidence by the Selection Committee in regard to the nativity of the candidate (Petitioner therein). In the prospectus issued by the Kakatiya Medical College, there is a specific provision that the nativity certificate shall not be treated as conclusive evidence, and that the Selection Committee had the necessary power to call for further material evidence in proof of residence. This decision, therefore, does not in any manner help the petitioner. There is no question of any estoppel also as the authorities never held out that the petitioner's domicile had been accepted. This contention, therefore fails.

21. The next contention raised is that the Selection Committee has not given any reasons for disbelieving the evidence adduced by the petitioner and for coming to the conclusion that the petitioner did not have the necessary domicile of 15 years in the Telangana region. Our attention was drawn to the Communication dated the 4th June, 1970 received by the petitioner. This communication states that "on scrutiny of further evidence produced by you on 6-4-1970 in support of our nativity of 15 years residence in Telangana region, the Selection Committee was not fully convinced." It is the case of the respondents that the Selection Committee, after consideration of the evidence produced

[12](1958) 1 Andh WR 280 : AIR 1958 And Pra 470

by the petitioner in regard to her nativity, came to the conclusion that there is no proof, for the residence of the petitioner between 1954 and 1961 in the Telangana region except the certificates given by the Sarpanch and the Patwari. The certificates issued by the Sarpanch and the Patwari did not satisfy the Selection Committee and they decided to reject the petitioner's application as she failed to satisfy that she had 15 years of residence.

22. It is not necessary that the reasons for rejecting an application should be communicated to the applicant. It is sufficient if the Selection Committee has considered all the evidence produced before it and has come to the conclusion that the evidence was not sufficient to hold that a particular applicant did have the necessary qualification of residence. From the file of the Selection Committee produced before us, the reason given by the Selection Committee is the petitioner's failure to satisfy in regard to her residence from 1954 to 1961.

23. The learned counsel for the petitioner relied upon a Division Bench decision of this Court in Writ Petn. No.313 of 1958, D/d. 18-4-1958 (Andh Pra). In this case it was not clear from the letter issued by the Principal as to whether he had formed an opinion as to the correctness of the nativity certificate. It was also not clear whether the Principal had approached the question from that point of view. A direction was, therefore, given to the Principal to consider whether the nativity certificate was correct within the purview of the Government Order mentioned in the judgment. This decision is not at all applicable to the facts before us. In the instant case, the nativity certificate and the evidence produced by the petitioner were considered and the petitioner was specifically informed that the Selection Committee was not satisfied in regard to her residence in the Telangana Region. This contention of the petitioner also fails.

24. Lastly it was argued, that the evidence produced by the petitioner before the Selection Committee was sufficient to hold that she had the necessary qualifying residence and no reasonable man could have come to a contrary conclusion. It must be noted here that the only evidence placed by the petitioner before the Selection Committee was the domicile certificate given by the Personal Assistant to the Collector on the 3rd March, 1970, the certificate of the Sarpanch dated the 2nd April, 1970 and the certificate of the Patwari dated the 24th January, 1970. The other certificates to which our attention was drawn, namely, the certificate given by the M.L.A. on the 9th April, 1970, the certificate given by the Head Master of the Upper Primary School, Mandamarri dated the 18th June 1970, the certificate given by M/s. Shashikant Karsonji and Co., dated the 5th April, 1970 and the certificate given by the Deputy General Manager of the Singareni Collieries Company Ltd. dated the 10th April, 1970 were not produced before the Selection Committee. The petitioner's grand-father, by his letter dated the 20th April, 1970, stated that he had since obtained a certificate from the M.L.A. of the area concerned and enclosed the same. In that letter he stated that the Petitioner was under his guardianship as his son-in-law i.e., the petitioner's father, had been leading a life of a vagabond and had left the petitioner's mother and the petitioner to his care." This statement, it should be noted, was made for the first time on the 20th April 1970 after the Selection Committee had taken a decision as to the eligibility of the petitioner. There was nothing in the evidence produced before the Selection Committee to show as to why the petitioner was under the guardianship of her maternal grand-father. From the application filed by the petitioner for admission, it was clear that she was born at Vijayawada and therefore not a born native of the Telangana Region. In Column (10) which deals with the place of education, she stated that Kundanapalli was the place of her elementary education and Mandamarri the place of her middle school education. No certificate was produced

by the petitioner before the Selection Committee to show in which school she had her elementary education. The transfer certificate issued by the Zilla Parishad Middle School, Mandamarri. shows that she was admitted into the VI standard on the 6th July, 1961 and studied in that school upto the 11th June 1963. Before the petitioner was admitted into the VI Standard, she must have either studied in some school or privately. It was not stated before the Selection Committee that the petitioner had her elementary education privately, and that she was not admitted into any school. The letter written by the grand-father on the 29th April, 1970 does not disclose that she was privately educated before she was admitted to the Zilla Parishad Middle School at Mandamarri in the year 1961. The grand-father, in his letter says that throughout her educational career he had admitted her in educational institutions as guardian and not her father. In this letter also he did not state that the petitioner was privately educated. It is for the first time in the affidavit filed in the writ petition that a statement was made that the grand-father, who was previously a school teacher under the Krishna District Board, got the petitioner educated at home up to the year 1961. The selection Committee could not have presumed that the elementary education of the petitioner was by her grand-father, and that she had not joined any school for the purpose. The Selection Committee was right in considering that ordinarily a student will be educated in a school, if not for the first two standards, at least for the higher standards from the third or fourth. When there was no single certificate forthcoming in regard to the petitioner's education in the lower standards, the Committee rightly concluded that there was no evidence in regard to the petitioner's residence in the Telangana region.

25. The certificates given by the Sarpanch and the Patwari only say that for the last 16 years the petitioner had been studying under the protection of her grand-father. They do not anywhere state as to where she was studying-whether she studied at home or in any school. In this state of evidence, it cannot be said that the Selection Committee could not at all have reached the conclusion that there was no satisfactory evidence of the petitioner's residence in the Telangana region between 1954 and 1961. It was not stated before the Selection Committee that the petitioner had come to live with the grand-father from the year 1954. We are not sitting in appeal over the decision of the Selection Committee; and according to the prospectus, the decision of that Committee is final. We could have interfered only if we were to come to the conclusion that no reasonable person could have arrived at the conclusion reached by the Selection Committee. We are unable to say so. This contention of the petitioner also fails.

26. It was argued by the learned counsel for the respondents on the strength of the decision of the Supreme Court in *Praga Tools Corporation v. C.V. Imanual*[13], that a Writ of mandamus cannot be issued against a private society. We do not think it necessary to determine this question as we do not see any reason to issue any mandamus, or order or direction to the Society or the Principal of the college.

27. The learned counsel for the petitioner pointed out that when the petitioner applied for

[13] AIR 1969 SC 1306

admission to the Andhra region, her application was rejected on the ground that she comes from an area outside Andhra, and argued that the case of the petitioner is an unfortunate one, she being a person who belongs to neither the Telangana region nor the Andhra region. We can only say that on the material produced by the petitioner before the two authorities concerned, they have come to the said conclusions. It will be open to the petitioner to apply from the proper region for the coming academic year and prove to the satisfaction of the authorities concerned that she belongs to the region from which she applies. Our decision will not preclude her from doing so.

28. In the result the Writ petition is dismissed, but there will be no order as to costs.
Petition dismissed.