

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
**THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

**+ WRIT PETITION Nos.21268, 21788, 21926, 22038, 22177,**  
**22261, 22449, 22570, 22571,**  
**23265, 23341, 23601 and 23605 of 2023**

% Date: 29.08.2023

# Prashansa Rathod,  
and others.

... Petitioners

**v.**

\$ The State of Telangana,  
Rep. by its Principal Secretary, Medical and  
Health Services Department, Secretariat, Hyderabad,  
and another.

... Respondents

! Counsel for the petitioner in W.P.No.21268 of 2023:  
Mr. K.Rama Krishna Reddy,  
learned Senior Counsel representing  
Mr. Manoj Reddy

! Counsel for the petitioners in W.P.Nos.21788 and 23265  
of 2023:  
Mr. B.Mayur Reddy,  
learned Senior Counsel  
representing Mr. Alluri Divakar Reddy

! Counsel for the petitioner in W.P.No.21926 of 2023:  
Mr. Prabhakar Peri

! Counsel for the petitioner in W.P.No.22038 of 2023:  
Mr. P.Nagesh

- ! Counsel for the petitioner in W.P.No.22177 of 2023:  
Mr. Kirthi Teja Kondaveeti
- ! Counsel for the petitioner in W.P.No.22261 of 2023:  
Mr. S.Surender Reddy
- ! Counsel for the petitioners in W.P.Nos.22449, 22570 and  
22571 of 2023: Mr. Uzair Ahmed Khan
- ! Counsel for the petitioner in W.P.No.23341 of 2023:  
Mr. K.R.Sunil Kumar
- ! Counsel for the petitioner in W.P.Nos.23601 and 23605 of  
2023: Mr. G.Dinesh Patil
- ^ Counsel for the respondents : Mr. N.Praveen Kumar  
Learned Government Pleader for Health,  
Medical & Family Welfare Department for the State
- ^ Counsel for the respondents: Mr. A. Prabhakar Rao,  
learned Standing Counsel for  
Kaloji Narayana Rao University of Health Sciences.

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➤ HEAD NOTE:

? CASES REFERRED:

1. (1989) 3 SCC 112
2. AIR 2002 AP 115
3. AIR 1976 AP 408
4. (1988) 4 SCC 526
5. (2003) 7 SCC 197
6. (1999) 8 SCC 139
7. 2000 SCC OnLine Bom 359
8. (2014) 2 AIR Kant R 578
9. 1991 Supp (1) SCC 600
10. (1999) 9 SCC 700
11. (2011) 4 SCC 635

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

**WRIT PETITION Nos.21268, 21788, 21926, 22038,**  
**22177, 22261, 22449, 22570, 22571,**  
**23265, 23341, 23601 and 23605 of 2023**

**COMMON ORDER:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

In this batch of writ petitions, the issue with regard to validity of Rule 3(III)(B) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 (hereafter referred to as '2017 Rules') arises for consideration. In view of the commonality of the issue, the writ petitions were heard analogously and are being decided by this common order.

**Facts in W.P.No.21268 of 2023:**

2. The facts as can be inferred from the averments in the petition in W.P.No.21268 of 2023 are that the petitioner who was born in Hyderabad claims herself to be permanent resident of State of Telangana. The petitioner

completed her schooling from classes 1<sup>st</sup> to 10<sup>th</sup> in Hyderabad Public School, Begumpet, Hyderabad. The parents of the petitioner are IPS officers and belong to All India Service. In the year 2017, the father of the petitioner was transferred to Chennai. Thereafter, in the year 2021, the mother of the petitioner was also transferred to Chennai. On account of COVID pandemic, it was not possible for the petitioner to stay in the boarding school at Hyderabad, as all boarding schools were shut down. The petitioner on account of transfer of her parents to Chennai, prosecuted her studies and passed her 11<sup>th</sup> and 12<sup>th</sup> classes examination from Chennai.

3. The petitioner thereafter appeared in the NEET examination on 07.05.2023. The result of the NEET examination was declared on 13.06.2023. However, on 02.08.2023, the Kaloji Narayana Rao University of Health Sciences (hereinafter referred to as, “the University”) declared the petitioner ineligible for admission as local candidate. The petitioner indicated her options on

06.08.2023. Thereafter, the petitioner has filed this writ petition on 07.08.2023 challenging G.O.Ms.No.114, dated 05.07.2017, on the ground that the same is unconstitutional. The petitioner also sought a relief that she be declared as local candidate for the purposes of admission into MBBS/BDS courses for the academic year 2023-2024.

**Facts in W.P.No.21788 of 2023:**

4. The petitioner in this case, claims to be the native of Mupkal Village, Nizamabad District of the State of Telangana. It is averred in the writ petition that the petitioner was born at ADR Hospital, Hyderabad. He did his schooling from class 1<sup>st</sup> to 10<sup>th</sup> between the years 2010 to 2020 in the State of Telangana. The petitioner has admittedly passed classes 11<sup>th</sup> and 12<sup>th</sup> examination from Royal International School, Palakkapalayam, Nammakal District in the State of Tamil Nadu.

5. It is further averred in the writ petition that after completion of class 12<sup>th</sup> in the year 2022, he had joined long term coaching for NEET during the academic year 2022-2023 at Sri Chaitanya Educational Institution, Hyderabad. The petitioner could not stay in Hyderabad by making alternative arrangements at the relevant time due to onset of COVID pandemic and had no option but to shift to Tamil Nadu where his mother stayed.

6. The petitioner thereafter appeared in the NEET examination, 2023 and cleared the same. The University on 02.08.2023 treated the petitioner as a non-local candidate.

7. The petitioner indicated his options on 05.08.2023. Thereafter, the petitioner has filed this writ petition on 10.08.2023 challenging G.O.Ms.No.114, dated 05.07.2017, on the ground that the same is unconstitutional.

**Facts in W.P.No.21926 of 2023:**

8. The petitioner in this petition, as is evident from averments made in the petition, claims to be the native of

State of Telangana. She did her schooling from classes 1<sup>st</sup> to 8<sup>th</sup> in the State and passed classes 9<sup>th</sup> and 10<sup>th</sup> from the Holy Mission Secondary School, Danapur, Patna, Bihar. She however completed her Intermediate (+2 examination) in the State of Telangana. After completion of said examination in the year 2021, the petitioner appeared in NEET examination 2023. However, on 02.08.2023, the University declared the petitioner as non-local candidate. Therefore, the petitioner has filed the present writ petition.

**Facts in W.P.No.22038 of 2023:**

9. Facts as can be gathered from the averments made in the writ petition are that the petitioner has studied from Nursery to 10<sup>th</sup> class in the State of Telangana and prosecuted his intermediate (+2 examination) course from Bangalore in the State of Karnataka. He appeared in the NEET examination 2023. The petitioner was not treated as local candidate. Thereupon, this writ petition has been filed.

**Facts in W.P.No.22177 of 2023:**

10. The petitioner in this petition has averred that she has studied 6<sup>th</sup> class in C.R.Reddy Public School, Eluru, during the year 2016-2017. Thereafter, she completed her 7<sup>th</sup> and 8<sup>th</sup> classes in Happiniez School in Mahabubnagar in the years 2017-2019. She completed her 9<sup>th</sup> and 10<sup>th</sup> classes from Orbis School, Pune, Maharashtra in the years 2019-2021 and thereafter completed her Intermediate from Sri Chaitanya Junior College, Hyderabad in the years 2021-2023. The petitioner appeared for NEET examination 2023. The petitioner's case is that though she has studied for a period of more than four years in the local area of the State of Telangana, yet the benefit of local candidate has not been extended to her.

**Facts in W.P.No.22261 of 2023:**

11. The petitioner in this case claims to be the native of State of Telangana. The petitioner did his schooling from classes 1<sup>st</sup> to 10<sup>th</sup> in the State of Telangana and thereafter



studied classes 11<sup>th</sup> and 12<sup>th</sup> from Alva's Pre-University College, Moodubidire, in the State of Karnataka.

12. The petitioner appeared in NEET examination 2023. However, the petitioner was not treated as a local candidate in the State of Telangana by the University. Being aggrieved, the present writ petition has been filed.

**Facts in W.P.No.22449 of 2023:**

13. The facts that can be gathered from the averments made in the writ petition are that the petitioner has completed her education from classes 1<sup>st</sup> to 11<sup>th</sup> abroad. The petitioner took admission for 12<sup>th</sup> class in Hyderabad in Hyderabad and has cleared the aforesaid examination. She has appeared for NEET examination 2023. She was declared as non-local by the University. Being aggrieved, the present writ petition has been filed.

**Facts in W.P.Nos.22570 and 22571 of 2023:**

14. In both the writ petitions, the petitioners are similarly placed. As per the averments in the said writ petitions, the petitioners have completed their education from pre-primary to class 11<sup>th</sup> in the State of Telangana. They have completed their class 12<sup>th</sup> from Karnataka. They have appeared for NEET examination 2023. They were declared as non-locals by the University. Being aggrieved, the present writ petitions have been filed.

**Facts in W.P.No.23265 of 2023:**

15. The case of the petitioner as pleaded in the writ petition, is that she is the native of Hyderabad and has completed her schooling from classes 1<sup>st</sup> to 8<sup>th</sup> in a school in Secunderabad. The petitioner has studied from classes 9<sup>th</sup> to 12<sup>th</sup> in a school in Mumbai, Maharashtra. The mother of the petitioner is employed as Deputy General Manager (Legal) in Hindustan Petroleum Corporation Limited.

16. The petitioner appeared in NEET examination 2023. The petitioner was not treated as a local candidate. Thereupon, the petitioner has filed this writ petition.

**Facts in W.P.No.23341 of 2023:**

17. Facts as can be gathered from the averments made in the writ petition are that the petitioner has studied from classes 1<sup>st</sup> to 5<sup>th</sup> in Joshua High School, Banjara Hills, Hyderabad. He has studied from classes 6<sup>th</sup> to 10<sup>th</sup> in Newton High School, Mothinagar, Borabanda, Medchal District. The petitioner has studied intermediate (+2 examination) at J.D.International School, Mahapura, Jaipur, Rajasthan. He appeared in the NEET examination 2023. The petitioner was not treated as local candidate. Thereupon, this writ petition has been filed.

**Facts in W.P.Nos.23601 and 23605 of 2023:**

18. The facts in both the cases are similar. The petitioners have passed classes 1<sup>st</sup> to 10<sup>th</sup> examinations

from Hyderabad. Thereafter they have passed classes 11<sup>th</sup> and 12<sup>th</sup> examinations from Kalaburagi in the State of Karnataka. The petitioners were not treated as local candidates by the University. Hence, these petitions.

**Submissions of learned Senior Counsel for the petitioner in W.P.No.21268 of 2023:**

19. At the outset, learned Senior Counsel for the petitioner has clarified that challenge in W.P.No.21268 of 2023 is confined to validity Rule 3(III)(B) of 2017 Rules.

20. Learned Senior Counsel for the petitioner submitted that requirement contained in Rule 3(III)(B) of 2017 Rules for studying four consecutive academic years or for residence for four consecutive years in a local area immediately preceding the date of commencement of relevant qualifying examination in which the candidate appeared or as the case may be first appeared, as arbitrary and unreasonable.

21. It is further submitted that Rule 3(III)(B) of 2017 Rules is required to be read down and it should be held that the same is not applicable to children whose parents belong to All India Service. It is also submitted that similar requirement of study of last two years of education before the examination in Delhi for admission to MBBS course has been held to be unreasonable in **Meenakshi Malik v. University of Delhi**<sup>1</sup> and denial of admission to such a candidate has been held to be unreasonable.

22. It is contended that 2017 Rules have not been framed under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (hereafter referred to as 'Presidential Order') and have to be read independently. It is further contended that neither the Presidential Order nor the Full Bench decision of this Court in **Bathina Rajya Shilpa v. NTR University of Health Sciences**<sup>2</sup> apply to the facts of the present case. It is pointed out that the Full Bench has neither dealt with the

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<sup>1</sup> (1989) 3 SCC 112

<sup>2</sup> AIR 2002 AP 115

issue of children of parents belonging to All India Service nor has interpreted the Presidential Order which is traceable to Article 371D of the Constitution of India. It is contended that Full Bench of this Court in **Bathina Rajya Shilpa** (supra) has not considered the decision of the Hon'ble Supreme Court in **Meenakshi Malik** (supra).

23. It is contended that a Division Bench of this Court by an interim order dated 06.07.2018 passed in W.P.No.23160 of 2018 has held that residential qualification prescribed under the Rules should be deemed to have fulfilled, as the place where a child accompanying his/her father to a place of posting of his/her father, should be taken to be her normal place of residence. It is further contended that the aforesaid writ petition was disposed of by a Division Bench of this Court by an order dated 08.07.2023. It was held in the said order that since the petitioner in the said case was admitted to MBBS course and in the process of completing the first year, therefore no case for disturbing the admission of the

petitioner in that case, was made out. Accordingly, the writ petition was closed. It is also contended that petitioner is entitled to the benefit of the order dated 08.07.2023 passed by a Division Bench of this Court in W.P.No.23160 of 2018.

24. Learned Senior Counsel for the petitioner has placed reliance on an order dated 12.09.2022 passed by a Division Bench of Bombay High Court in **Ms. Priya Kedar Gokhale v. State of Maharashtra** (W.P.No.8539 of 2022) and has contended that the Rules need to be read down to provide relaxation or exemption for those candidates whose parents are members of All India Service. It is urged that the decision of the Supreme Court in **Meenakshi Malik** (supra) has a precedential value under Article 141 of the Constitution of India. It is further urged that the impugned Rule has been framed in exercise of powers under Section 3 read with Section 15(1) of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee), Act, 1983 and the said Act does not define the 'local area'. It is also urged that the impugned Rules

impugned in this writ petition have not been made in pursuance of the powers under Article 371D(2)(c)(ii) of the Constitution of India and there is no Presidential Order in the matter of admission to any University.

25. Alternatively, it is contended that the petitioner is a local candidate as she is squarely covered by Rule 3(III)(C)(ii)(a) of 2017 Rules and therefore deserves to be treated as a local candidate. It is further contended that the provision contained in Regulation 4(b) of the Presidential Order, which is analogous to Rule 3(III)(C)(ii)(a) of 2017 Rules, was considered by a Division Bench of this Court in **Tahsildar v. T.Venkat Reddy**<sup>3</sup> and the requirements of residence were referred to with regard to the Presidential Order issued in the year 1974. It is therefore submitted that in the light of the aforesaid decision, the petitioner is entitled to be treated as a local candidate.

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<sup>3</sup> AIR 1976 AP 408



**Submissions of learned Senior Counsel for the petitioner in W.P.No.21788 of 2023:**

26. Learned Senior Counsel, at the outset, submitted that the petitioner has confined his challenge to Rule 3(III)(B) of 2017 Rules. It is further submitted that the decision of the Full Bench of this Court in **Bathina Rajya Shilpa** (supra) does not apply to the facts of the case, as the said decision has not considered the analogous provision, namely paragraph 4(2)(a)(i) of the A Presidential Order which deals with requirement of residence of seven years and has only considered the scope of paragraph 4(2)(b)(i) of the Presidential Order. It is also submitted that the petitioner is entitled to be considered as a local candidate under Rule 3(III)(C)(ii)(a) of 2017 Rules.

**Submissions of learned Counsel for the petitioner in W.P.No.21926 of 2023:**

27. Learned counsel for the petitioner has submitted that the petitioner is confining the challenge only to validity of

Rules 3(III)(B)(a) and 3(III)(C)(ii) of 2017 Rules. It is further submitted that the petitioner is entitled to be treated as local candidate under Rule 3(III)(C)(i) of 2017 Rules and the word 'State' should be read as 'Country'.

**Submissions of learned Counsel for the petitioner in W.P.No.22038 of 2023:**

28. Learned counsel for the petitioner submits that the petitioner has not challenged the validity of 2017 Rules framed by the State of Telangana. However, it is submitted that on proper construction of Rule 3(III)(C)(ii)(a) of 2017 Rules, the petitioner is a local candidate and therefore, the respondents be directed to extend him such a benefit.

**Submissions of learned Counsel for the petitioner in W.P.No.22177 of 2023:**

29. Learned counsel for the petitioner submitted that the petitioner has impugned the validity of Rule 3(III)(C)(ii) of 2017 Rules. The submissions made by learned Senior

Counsel for the petitioners in the connected writ petitions have been adopted and reliance has been placed on an order of Division Bench of this Court in **Anumula Sravani v. State of Andhra Pradesh** (W.P.No.29133 of 2016 dated 30.08.2016).

**Submissions of learned Counsel for the petitioner in W.P.No.22261 of 2023:**

30. Learned counsel for the petitioner, at the outset, submitted that the grievance of the petitioner is confined to Rule 3(III)(B) of 2017 Rules and has adopted the submissions made by learned Senior Counsel for the petitioners in the connected writ petitions. It is alternatively submitted that the petitioner is eligible to be treated as local candidate under Rule 3(III)(C)(ii)(a) of 2017 Rules.

**Submissions of learned Counsel for the petitioner in****W.P.No.22449 of 2023:**

31. Learned counsel for the petitioner submits that in the writ petition, the petitioner is seeking a direction to the University to treat the petitioner as a local candidate under Osmania University local area for admission in to MBBS for the academic year 2023-2024. It is further submitted that the petitioner is entitled to be treated as a local candidate in view of the residence certificate issued to the mother of the petitioner who is resident of State of Telangana.

**Submissions of learned Counsel for the petitioners in****W.P.Nos.22570 and 22571 of 2023**

32. Learned counsel for the petitioners submits that the petitioners in these writ petitions are entitled to be treated as local candidates under Rule 3(III)(C)(ii) of 2017 Rules and has adopted the submissions made by learned Senior Counsel for the petitioners in the connected writ petitions.

**Submissions of learned Senior Counsel for the petitioner in W.P.No.23265 of 2023:**

33. Learned Senior Counsel for the petitioner has adopted the submissions made by learned Senior Counsel for petitioner in W.P.No.21268 of 2023. It is submitted that the requirement for studying four consecutive academic years or residence for four consecutive years in a local area immediately preceding the date of commencement of relevant qualifying examination in which the candidate appeared or as the case may be first appeared, should be read down in respect of candidates whose parents are members of All India Service or Central Government employees.

**Submissions of learned Counsel for the petitioner in W.P.No.23341 of 2023:**

34. Learned counsel for the petitioner has adopted the submissions made by learned Senior Counsels for the petitioners in the connected writ petitions.

**Submissions of learned Counsel for the petitioners in  
W.P.Nos.23601 and 23605 of 2023:**

35. Learned counsel for the petitioners has adopted the submissions made by learned Senior Counsel for the petitioner in W.P.No.21268 of 2023.

**Submissions of learned Standing Counsel for the  
University:**

36. On the other hand, learned Standing Counsel submitted that under the impugned Rules, the candidates who seek status of local or non-local candidates are required to satisfy the requirement under the Presidential Order. It is further submitted that the impugned Rule is *pari materia* with paragraph 4(1)(a) and (b) of the Presidential Order.

37. It is also submitted that the challenge to the validity of the Presidential Order was made before the Hon'ble Supreme Court and the writ petitions have been dismissed

on the ground that the Presidential Order is made under Article 371D of the Constitution of India. In this connection, reference has also been made to decision of the Hon'ble Supreme Court in **C.Surekha v. Union of India**<sup>4</sup>. It is contended that since the Presidential Order has not been challenged, which is the basis for enacting the impugned Rules, the petitioners are not entitled to any relief.

38. It is urged that neither the decision in **Meenakshi Malik** (supra) nor the decision of a Division Bench of Bombay High Court in **Ms. Priya Kedar Gokhale** (supra) applies to the facts of the case, as the validity of the Presidential Order was not in the aforesaid decisions. It is further urged that the requirement contained in the Rules was different than the one in the impugned Rules.

39. It is pointed out that 2017 Rules contemplate three local areas, namely Osmania University local area, Andhra University local area and Sri Venkateswara University local area. It is contended submitted that under Rule 3(III)(B) of

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<sup>4</sup> (1988) 4 SCC 526

2017 Rules, a candidate has either to study or to reside in local area for four consecutive years ending with the academic year in which he appeared or as the case may be first appeared in the relevant qualifying examination and in case he does not study in a local area for a period of four years, he has to reside in local area for a period of four years immediately preceding the date of commencement of the relevant qualifying examination. It is further contended that Rule 3(III)(C) applies to a situation where the candidate has studied in more than one local area and prescribes the requirement of seven years of either study or residence.

40. It is argued that the Presidential Order has been issued with the approval of the Hon'ble President of India. It is further argued that the petitioners do not fall within Rule 3(III)(C)(ii)(a) of 2017 Rules, as they have to be residents for whole of the seven consecutive academic years. Attention of this Court has also been invited to Section 95 of the Andhra Pradesh Reorganization Act,



2014, and it is submitted that the process of admission has to be continued as per the Presidential Order for a period of ten years which commences from 02.06.2014 and ends on 01.06.2024.

41. It is further submitted that in order to fulfil the requirement of the residence, the candidate has to reside in the local area, but must not study in an educational institution recognized by the State Government. Learned Standing Counsel for the University has also placed reliance on the Full Bench decision of this Court in **Bathina Rajya Shilpa** (supra) and has referred to several paragraphs of the said decision in support of his contention. It is also submitted that another Division Bench decision of this Court in **B.V.S.Sidhartha Subramanyam v. State of Telangana** (W.P.No.38580 of 2022, dated 04.11.2022) and a Division Bench of Andhra Pradesh High Court in **Pasupuleti Koteswara Rao v. State of Andhra Pradesh** (W.P.No.10319 of 2019 and batch, dated 14.12.2020) dealt with a similar issue and by following the Full Bench

decision of this Court in **Bathina Rajya Shilpa** (supra) have held that the petitioners in the said cases were similarly situated, were not entitled to any relief.

42. It is contended that 2017 Rules have come into force from 07.07.2017 and have been implemented for the academic sessions from 2018-2019 till 2022-2023 consistently except in case of one candidate, namely Vasagiri Sai Nithva, who was granted relief in pursuance of an interim order dated 06.07.2018 passed by a Division Bench of this Court in W.P.No.23160 of 2018 (**Vasagiri Sai Nithva v. State of Telangana**).

43. Learned Standing Counsel has fairly submitted that the petitioners in any case are eligible for consideration under G.O.P.No.646, dated 10.07.1979, and their cases shall be considered under paragraph 11 of the aforesaid Government Order. While inviting the attention of this Court, it has been contended by the learned Standing Counsel that under Rule 3 of 2017 Rules a candidate had to satisfy the local, non-local requirement as laid down in

the Presidential Order as amended in G.O.P.No.646, dated 10.07.1979, which is not under challenge in any of the petitions.

**Rejoinder submissions of Senior Counsel for the petitioners in W.P.Nos.21788 and 23265 of 2023:**

44. Learned Senior Counsel submitted that 2017 Rules have been enacted under the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and the said Act does not emanate from the Presidential Order. It is pointed out that the said Act has been enacted by the State Legislature in exercise of powers under Entry 25 of the Concurrent List III to Seventh Schedule appended to the Constitution of India. The petitioners are therefore well within their rights to challenge the validity of 2017 Rules and the issue of validity of Rule can be examined by this Court under Article 226 of the Constitution of India.

45. It is also pointed out that the decision of the Hon'ble Supreme Court in **C.Surekha** (supra) has not dealt with the validity of the Presidential Order. Therefore, the contention made by the learned Standing Counsel for the University is incorrect. It is further pointed out that 2017 Rules have to be read down as a whole and this Court should read down Rule 3(III)(B) of 2017 Rules to save it from the vice of unconstitutionality. It is also pointed out that the Full Bench of this Court in **Bathina Rajya Shilpa** (supra) has not examined the validity of Rule 3(III)(C)(i)(a) and 3(III)(C)(ii)(a) of 2017 Rules and therefore is not a binding precedent and is of assistance to respondents. It is contended that the Division Bench of this Court in **B.V.S.Sidhartha Subramanyam** (supra) as well as the Division Bench of Andhra Pradesh High Court in **Pasupuleti Koteswara Rao** (supra) ought not to have mechanically applied the Full Bench decision of Andhra Pradesh High Court, which, even otherwise, has no application to the facts of the case. It is, therefore, contended that the Division Bench decision of this Court as well as Andhra Pradesh High Court are of no

assistance to the respondents. Alternatively, it is submitted that the petitioners in any case are eligible for consideration of their claim under paragraph 11 of G.O.P.No.646, dated 10.07.1979, which has not been disputed by the learned Standing Counsel.

**Rejoinder submissions of learned Senior Counsel representing for the petitioner in W.P.No.21268 of 2023.**

46. Learned Senior Counsel for the petitioner in W.P.No.21268 of 2023 submitted that though Article 371D of the Constitution of India contemplates the Presidential Order, yet the Hon'ble President has not issued an order for the State of Telangana. It is further submitted that Section 95 of the Andhra Pradesh Reorganisation Act, 2014, merely contemplates continuation of quotas under the Presidential Order but no Presidential Order is issued. It is also submitted that the Presidential Order issued in the year 1974 does not apply to the State of Telangana after 02.06.2014. It is contended that Section 95 of the Andhra Pradesh Reorganisation Act, 2014, only protects

the quota prescribed in Clause 6 of the Presidential Order and applies to the Universities existing as on 02.06.2014.

**ANALYSIS:**

47. We have considered the rival submissions made on both sides and perused the record. The issues which arise for consideration in this batch of writ petitions can be summarised as under:

(i) Whether the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 have been framed either under Article 371D of the Constitution of India or under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (hereafter referred to as 'Presidential Order'?)

(ii) Whether the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 have been framed under the Telangana Educational Institutions

(Regulation of Admission and Prohibition of Capitation Fee) Act, 1983?

(iii) Whether the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 has been framed either under Article 371D of the Constitution of India or under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974?

(iv) Whether the validity of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 has been examined by Hon'ble Supreme Court in **C.Surekha v. Union of India** ((1988) 4 SCC 526)?

(v) Whether it is open for this Court to examine the issue with regard to validity of the Telangana Medical & Dental Colleges

Admission (Admission into MBBS & BDS Courses) Rules, 2017?

(vi) Whether the case of the petitioners fall under Rule 3(III)(C)(ii)(a) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017?

(vii) Whether the Rule 3(III)(B) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 is arbitrary and violative of Article 14 of the Constitution of India?

(viii) If so, whether Rule 3(III)(B) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 is required to be struck down or it can be read down? and

(ix) Relief to which petitioners are entitled to?



48. Before proceeding further, it is apposite to take note of relevant portion Article 371D of the Constitution of India and Section 95 of the Andhra Pradesh Reorganisation Act, 2014, which are extracted below for the facility of reference.

49. The relevant extract of Article 371D of the Constitution of India reads as under:

**371D. Special provisions with respect to the State of Andhra Pradesh or the State of Telangana -**

(1) The President may by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.

(2) An order made under clause (1) may, in particular,—

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure

as may be specified in the order the persons holding such posts to the local cadres so organised;

(b) specify any part or parts of the State which shall be regarded as the local area—

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made—

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

to or in favour of candidates who have resided or studied for any period specified in the order in the local

area in respect of such cadre, University or other educational institution, as the case may be.

50. Section 95 of the Andhra Pradesh Reorganization Act, 2014 reads as under:

95. Equal opportunities for quality higher education to all students: In order to ensure equal opportunities for quality higher education to all students in the successor States, the existing admission quotas in all government or private, aided or unaided, institutions of higher, technical and medical education in so far as it is provided under Article 371D of the Constitution, shall continue as such for a period of ten years during which the existing common admission process shall continue.

51. In exercise of powers under paragraph 8 of the Presidential Order, G.O.P.No.646, dated 10.07.1979, has been issued. Paragraph 11 of G.O.P.No.646, dated 10.07.1979, is extracted below for the facility of reference:

11. As clarifications were being sought on the question as to who should be considered eligible to apply as candidates belonging to the State of Andhra Pradesh for the purpose of admission to courses of

studies offered by the educational institutions, subject to the control of the State Government, against the 15% of the available seats kept unreserved in terms of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 the Government after careful consideration have directed that the following categories of candidates may be treated as eligible to apply for admissions to educational institutions in the State, subject to the control of the State Government; as candidates belonging to the State of Andhra Pradesh against-the 15% of the available seats left un- reserved in terms of the Presidential order:

- (i) All local candidates defined in the Presidential order;
- (ii) Candidates who have resided in the State for a total period of ten years excluding periods of study outside the State or either of whose parents have resided in the State for a total period of ten years excluding periods of employment outside the State;
- (iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector Corporation Local Bodies, Universities and other similar quasi Public Institution within the State; and
- (iv) Candidates who are spouses of those in the employment of the State or Central Government Public Sector Corporations, Local Bodies Universities and educational institutions recognized by the Government

or a University or Other competent authority and similar other quasi Government institutions within the State.

52. In exercise of powers conferred by Entry 25 of the Concurrent List III to the Seventh Schedule of the Constitution of India, an Act, namely, the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee), Act, 1983 (hereinafter referred to as 'the 1983 Act') has been enacted. Section 15 of the said Act empowers the Government to make rules for carrying out the purposes of the said Act. In exercise of powers under Section 3 read with Section 15(1) of the said Act, the Rules, namely the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017, have been framed.

After having noticed the relevant provisions, we may now proceed to deal with issues ad-seriatim.

***(i) Whether the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 have been framed either under Article 371D of the Constitution of India or under the Andhra***

***Pradesh Educational Institutions (Regulation of Admissions) Order, 1974?***

53. Paragraph 3 of G.O.Ms.No.114, dated 05.07.2017 by which 2017 Rules have been notified. Paragraph 3 is extracted below for facility of reference:

NOTIFICATION

3. In exercise of the powers conferred by Section 3 read with sub-section (1) of Section 15 of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983), in supersession of the earlier rules regarding preparation of seat matrix and the selection procedure for admission into MBBS & BDS Courses in the Competent Authority quota, the Governor of Telangana hereby makes the rules for preparation of seat matrix and the selection procedure for admission into MBBS & BDS Courses under the Competent Authority Quota:-

These Rules may be called the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017.

54. Thus, from perusal of paragraph 3 of G.O.Ms.No.114, dated 05.07.2017, it is evident that 2017 Rules have

neither been framed in exercise of powers under Article 371D of the Constitution of India nor under the Presidential Order. Therefore, the issue (i) is answered in the negative by stating that 2017 Rules have neither been framed under Article 371D of the Constitution of India nor under the Presidential Order.

***(ii) Whether 2017 Rules have been framed under the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983?***

55. From the perusal of paragraph 3 of the G.O.Ms. No.114, dated 05.07.2017, it is evident that 2017 Rules have been framed under the 1983 Act. Section 3 of the aforesaid Act provides for regulation of admission into educational institutions. Section 15 of the Act confers the power to frame 2017 Rules. Sub-section (1) of Section 15 of the Act provides that Government may, by notification, make Rules for carrying out all or any of the purposes of the aforesaid Act. Therefore, it is axiomatic that 2017 Rules

have been framed under the aforesaid Act. Therefore, the issue (ii) is answered in affirmative.

***(iii) Whether the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 has been framed either under Article 371D of the Constitution of India or under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974?***

56. Entry 25 of the List III of Seventh Schedule to the Constitution of India reads as under:-

25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

57. The Statement of Objects of the 1983 Act is quoted below for the facility of reference:

**Statement of Objects and Reasons**  
(Act No.5 of 1983)

The undesirable practice of collecting fee at the time of admission into educational institutions in the State has been on the increase. This practice has been causing frustration among



the indigent and meritorious students at the same time contributing to a steep fall in the standards of education. The existing provisions contained in the A.P.Education Act, 1982 are found to be not adequate to control effectively this evil practice. In order to eradicate the practice of collecting capitation fee and to maintain excellence in the standards of education, the Government have decided to prohibit the collection of capitation fee by an educational institution and to make any such collection a cognizable offence. Incidentally it has been proposed to regulate admission into educational institutions on the basis of merit. It has also been decided to regulate the fee that may be collected by the educational institutions.

58. Article 371D of the Constitution of India empowers the Hon'ble President, by an order made with respect to the State of Andhra Pradesh or the State of Telangana provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of State, in the matter of public employment and in the matter of education, different provisions may be made for various parts of the State. The

order may *inter alia* provide for the purposes of admission into any University within the State or any other educational institution which is subject to control of the State Government. In exercise of the aforesaid power, the President has made the Presidential Order.

59. Paragraph 8 of the aforesaid Order provides that the President may, by an order, require the State Government to issue such directions as may be necessary or expected for the purpose of giving effect to the said Order to any University or to any other educational institution subject to the control of the State Government and the University or educational institution shall comply with such directions. The source of power to enact the Act can neither be traced to Article 371D of the Constitution of India nor under paragraph 8 of the Presidential Order. Therefore, it is axiomatic that the Act has been enacted in exercise of powers under Entry 25 of List III of the Seventh Schedule to the Constitution of India. The issue (iii) is, therefore, answered in the negative and it is stated that the 1983 Act

has been enacted neither under Article 371D of the Constitution of India nor under the Presidential Order.

***(iv) Whether the validity of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 has been examined by Hon'ble Supreme Court in C.Surekha v. Union of India ((1988) 4 SCC 526)? and***

***(v) Whether it is open for this Court to examine the issue with regard to validity of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017?***

60. Both the above issues are inter-related and therefore, are being dealt with together. In **C.Surekha** (supra), the Hon'ble Supreme Court was dealing with a challenge made to validity of Article 371D (2)(b)(iii) and (c)(ii) of the Constitution of India as well as Presidential Order. Paragraphs 4 to 8 of the aforesaid judgment read as under:

**4.** Andhra Pradesh institutions were kept out from the purview of the Scheme by order of this Court. It is true that the direction in the order dated 26-7-1984 [(1984) 3 SCC 706], left the matter open to be agitated and petitioner's

application seems to come within the limits left open. Mr Choudhary appearing for the State of Andhra Pradesh referred to the historical background leading to the incorporation of Article 371-D in the Constitution by the 32nd Amendment with effect from 1-7-1974. The decision of this Court in *P. Sambamurthy v. State of Andhra Pradesh* [(1987) 1 SCC 362 : (1987) 2 ATC 502] does not support the petitioner's contention that Article 371-D militates against the basic structure of the Constitution. The question that was considered by the Constitution Bench in *Sambamurthy case* [(1987) 1 SCC 362 : (1987) 2 ATC 502] was denial of judicial review on the principle accepted in *Minerva Mills Ltd.v. Union of India* [(1980) 3 SCC 625 : (1981) 1 SCR 206] and *Sampat case* [*S.P. Sampath Kumar v. Union of India*, (1985) 4 SCC 458 : 1985 SCC (L&S) 986] (reference) decision. This Court came to hold that clause (5) which provided that the final order of the Administrative Tribunal shall become effective by its confirmation by the State Government and it was open to the State Government to modify or annul that order within 90 days militated against the Doctrine of Basic Structure. At the same time the court held that Article 371-D (3) was valid and intra vires the amending powers of the Parliament. This clearly

means that the Scheme of Article 371-D was valid and the provision in clause (5) alone was bad. Clause (10) of Article 371-D provides:

“The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.”

In view of the terms of clause (10) and the effect of the decision of the Constitution Bench in *Sambamurthy case* [(1987) 1 SCC 362 : (1987) 2 ATC 502] , the petitioner is not entitled to any relief on the first ground, namely, for a declaration that Article 371-D militates against the basic structure of the Constitution.

**5.** The only other question that survives for consideration is as to whether within the Presidential Order of 1974, the Scheme in *Dr Pradeep Jain v. Union of India* [(1984) 3 SCC 654] can be worked out. The Presidential Order of 1974 defines “available seats” and “local area” as also “statewide educational institutions” in sub-clauses (a), (b) and (e) of clause 2. Clause 3 describes the three local areas. Clause 9 gives overriding effect to the Presidential Order. Under the Presidential Order, admission to the educational institutions is limited only to local

and non-local candidates. It does not contemplate of admission into educational institutions otherwise. The contention of Mr Choudhary that if the Presidential Order has got to be given effect to in its true spirit, the scheme in *Dr Pradeep Jain case* [(1984) 3 SCC 654] cannot, consistently with the Presidential Order, be implemented cannot be brushed aside and bears serious examination on certain important aspects. If the 15 per cent seats are not treated as reserved in terms of the Presidential Order and are intended to go to those who qualify at the All India Entrance Examination it is a statable possibility that the Presidential Order might be diluted. It may be doubtful if, in ascertaining the import of 'available seats', it would be permissible to deduct the 15 per cent seats for non-locals applying the formula of *Dr Pradeep Jain case* [(1984) 3 SCC 654]. We are inclined to think that the contention advanced by Mr Choudhary on behalf of the respondent-State that within the ambit of the Presidential Order, the scheme adopted by this Court in *Dr Pradeep Jain case* [(1984) 3 SCC 654] is eminently arguable and raises certain important issues. It is, however, not necessary to pronounce on this question finally as the petitioner, admittedly, has already been provided admission in one of the Medical Colleges.

6. Before we part with the case we would, however, like to indicate that the Scheme in *Dr Pradeep Jain case* [(1984) 3 SCC 654] is, in the opinion of this Court, in national interest as also in the interest of the States. Competition at the national level is bound to add to and improve quality. Andhra Pradesh students on the whole are not at all backward and we are of the opinion that they would stand well on comparative basis. It is for the State and the Central Governments, apart from the legal issues involved to decide whether in the general interest of the State, the scheme in the Presidential Order should either be so understood as to permit and assimilate the *Pradeep Jain* [(1984) 3 SCC 654] principle or should be explained, if necessary, by an appropriate amendment of the Presidential Order. We would, however, leave it to the respondents to take their decision in the matter. We would not like, therefore, to pronounce on the legal question finally in this case.

7. As the petitioner has already got admission elsewhere and is not interested in seeking admission into one of the Andhra Pradesh Colleges any more, the petition really becomes infructuous.

8. Parties are directed to bear their own costs.

61. Thus, from the perusal of the aforesaid paragraphs of the decision of the Hon'ble Supreme Court, it is evident that the validity of Article 371D was upheld and it was also held that the same does not militate against the basic structure of the Constitution of India. However, the Hon'ble Supreme Court did not examine the issue with regard to the validity of the Presidential Order. Therefore, the issue (iv), i.e., *whether the validity of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 has been examined by Hon'ble Supreme Court in C.Surekha v. Union of India ((1988) 4 SCC 526)* is answered in the negative by stating that the Hon'ble Supreme Court did not examine the validity of the Presidential Order. The issue (v) *whether it is open for this Court to examine the issue with regard to validity of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017* is answered in affirmative and it is held that it is open for this Court to examine the question of validity of 2017 Rules.



***(vi) Whether the case of the petitioners fall under Rule 3(III)(C)(ii)(a) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017?***

62. Rule 3(III) of 2017 Rules deals with reservation for admission. Rule 3(III)(A) defines “local area”. The aforesaid rule is extracted below for the facility of reference:

**(A) "The Local Areas" means**

- (a) The part of the State comprising the Districts of Adilabad, Hyderabad (including Twin Cities) Rangareddy, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad and Warangal shall be regarded as the Osmania University Local Area (Telangana);**
- (b) The part of the state comprising the District of Srikakulam, Vizianagaram, Vishakapatnam, East Godavari, West Godavari, Krishna, Guntur and Prakasham shall be regarded as the Andhra University Local area (Andhra);**

**(c) The part of the State comprising the Districts of Ananthapur, Kurnool, Chittoor, Çuddapph and Nellore shall be regarded as the Sri Venkateswara University Local Area (Rayalaseéma);**

63. Thus, the aforesaid Rule divides the entire State of Andhra Pradesh into three local areas with reference to erstwhile University areas, namely Osmania University Local Area (OU Area), Andhra University Local Area (AU Area) and Sri Venkateswara University Local Area (SVU Area).

64. Provisions of Rule 3(III)(B) and (C) of 2017 Rules are *pari materia* with the provisions of paragraphs 4(1) and 4(2) of the Presidential Order. For the facility of reference, Rule 3(III)(B) and (C) of 2017 Rules and paragraphs 4(1) and 4(2) of the Presidential Order are reproduced below:

| <b>Rule 3(III) of the 2017 Rules</b>                                                                | <b>Paragraph 4 of the Presidential Order</b>                                                |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| (B) <u>The Local Candidate:</u> A candidate for admission shall be regarded as a local candidate in | <b>4) Local candidate:</b> -- (1) A candidate for admission to any course of study shall be |

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| <p>relation to a local area.</p> <p>a) If he has studied in educational Institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or as the case may be first appeared in the relevant qualifying examination.</p> <p style="text-align: center;">OR</p> <p>b) Where during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or as the case may be first appeared for the relevant qualifying examination, he has not studied in any educational Institutions, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination which he appeared or as the case may be first appeared.</p> | <p>regarded as a local candidate in relation to a local area--</p> <p>(a) if he has studied in an educational institution or educational institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared for the relevant qualifying examination: or</p> <p>(b) where during the whole or any part of four consecutive academic years ending with the academic year in which he appeared, or as the case may be, first appeared for the relevant qualifying examination he has not studied in any educational institution, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the qualifying examination in which he appeared or, as the case</p> |
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| <p>(C) A Candidate for admission into the course who is not regarded as local candidate under clause (A) in relation, to any local area shall</p> <p>(i) If he has studied in Educational Institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or as the case may be first appeared for the relevant qualifying examination be regarded as a local candidate in relation to:</p> <p>(a) Such local area where he/she has studied for the maximum period out of the said period of seven years.</p> <p style="text-align: center;">OR</p> <p>(b) Where the period of his/her study in two or more local areas are equal, such local area, where he/she has studied last in such equal period.</p> <p style="text-align: center;">OR</p> | <p>(2) A candidate for admission to any course of study who is not regarded as a local candidate under sub-paragraph (1) in relation to any local area, shall --</p> <p style="padding-left: 40px;">(a) if he has studied in educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination be regarded as local candidate in relation to -</p> <p style="padding-left: 40px;">(i) such local area where he has studied for the maximum period out of the said period of seven years; or</p> <p style="padding-left: 40px;">(ii) where the periods of his study in two or more local areas are equal, such local area where he has studied last in such equal periods;</p> <p style="padding-left: 40px;">(b) if during the whole or</p> |

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| <p>(ii) If, during the whole or any part of seven consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination he/she has, not studied in the educational institutions in any local area but has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in relation to</p> <p>(a) Such local area where he/she has resided for the maximum period out of the said period of seven years.</p> <p style="text-align: center;">OR</p> <p>(b) Where the periods of his/her residence in two or more local areas are equal, such local areas where he/she has resided last in such equal periods.</p> | <p>any part of the seven consecutive academic years ending with the academic year in which he appeared or, as the case may be, first appeared for the relevant qualifying examination, he has not studied in the educational institutions in any local area, but has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in relation to ;</p> <p>(i) such local area where he has resided for a maximum period out of the said period of seven years; or</p> <p>(ii) where the periods of his residence in two or more local areas are equal, such local area where he has resided last in such equal periods.</p> |
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65. The scope and ambit of paragraphs 4(1) and 4(2) of the Presidential Order were interpreted by a Full Bench of this Court in **Bathina Rajya Shilpa** (supra). The Full Bench was dealing with a case of candidate who studied in educational institutions right from Kindergarten to SSC in the State of Telangana except for two years, held in paragraphs 43 to 48 as under:

43. In order to be treated as local candidate in relation to a local area under Clause (a) one must have studied in an educational Institution or educational institutions in the local area for a period of not less than four consecutive academic years ending with the academic year in which he or she first appeared in the relevant qualifying examination.

44. Admittedly, the appellant did not study in any of the local areas in the State for a minimum period of four consecutive academic years ending the academic year in which she appeared the relevant qualifying examination i.e. two year Intermediate course though she happened to study in Guntur from Kindergarten to SSC for more than ten years. She prosecuted her two-year Intermediate course during 1998-2000 in the State of Gujarat. Since out of the four consecutive academic years ending with the qualifying examination, the petitioner had studied only for two years in Guntur district, she cannot be treated as a

local candidate of that area in terms of sub-paragraph (11) of Para 4.

45. However, a candidate who is not regarded as local a candidate under para 4(1) can be treated as a local candidate under sub-paragraph (2) if he/she fulfils either Clause (a) or Clause or Clause (b). Again Clause (b) is applicable only to candidates who have not studied in educational institutions but have resided in the State for a period of not less than seven consecutive academic years immediately preceding the date of commencement of the relevant qualifying examination in which he or he appeared or first appeared. Since the petitioner has studied in educational institutions, she doesn't come under that clause.

46. In order to be treated as local candidate under Clause (a) of sub-paragraph (2) of Paragraph 4 one must have studied in an educational institution or educational institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he or she first appeared in the relevant qualifying examination and such candidate will be regarded as a local candidate in relation to (1) such local area where he has studied for the maximum period out of the said period of seven years or (2) where the periods of his or her study in two or more local areas are equal, such local area where the candidate has studied last in such equal periods. Admittedly, the appellant has not fulfilled this clause also as she had not studied for

seven consecutive academic years in the State of Andhra Pradesh ending with the relevant qualifying examination of Intermediate. She had studied only for five years in the State out of the seven consecutive years ending with the qualifying examination and she studied the qualifying examination in Gujarat State. In order to be treated as a local candidate under 4(2), it is essential that she must have studied seven consecutive academic years ending with the relevant qualifying examination in the State.

47. Therefore, it is clear that the petitioner has not fulfilled the criteria laid down under para 4 of the Presidential Order in order to be treated as a local candidate either in terms of para 4(1) or para 4(2). True, the petitioner did study in the State of Andhra Pradesh for a period of more ten years right from kindergarten to SSC and in spite of that she could not be treated as a local candidate in relation to any of the local areas of the State. Had she studied the qualifying examination in the State, the matter would have been different.

48. We do agree that a candidate who is a resident of the State of Andhra Pradesh and who had studied in educational institutions right from the kindergarten to SSC in the State except for the two years could not be treated as a local candidate in relation to any of the local areas whereas it may be possible that a candidate who do not belong to the State of Andhra Pradesh but who had studied 4 consecutive academic years in any local area of the State ending with the



academic year in which he appeared or first appeared for the relevant qualifying examination could be regarded as a local candidate though he is not a resident of the State of Andhra Pradesh and studied only for four years in the State. But, having regard to the provisions of the Presidential Order and in the absence of any provision having been made in the Presidential Order governing such situation, no relief can be granted to the petitioner.

66. In **Divisional Controller, KSRTC v. Mahadeva Shetty**<sup>5</sup>, Hon'ble Supreme Court held that the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The Court dealing with a later case should carefully try to ascertain the principle laid down in previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. It has further been held that the scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. It is well settled that a decision is available as a precedent only if it decides a question of law (see **Mehboob Dawood Shaikh v. State of Maharashtra** ((2004) 2 SCC 362).

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<sup>5</sup> (2003) 7 SCC 197

Similarly, a decision which does not consider the issue involved in the later case cannot be deemed to be a law declared to have a binding effect under Article 141 of the Constitution of India (see **State of Uttar Pradesh v. Synthetics and Chemicals Limited** ((1991) 4 SCC 139).

67. The Full Bench of Andhra Pradesh High Court has not interpreted Rule 3(III) (B) and (C) of 2017 Rules as 2017 Rules have been framed subsequent to the aforesaid decision. Therefore, the Full Bench of this Court in **Bathina Rajya Shilpa** (supra) is not a binding precedent insofar as interpretation of 2017 Rules is concerned. However, the interpretation put forth by the Full Bench of this Court of paragraphs 4(1) and 4(2) of the Presidential Order is of assistance to us in interpreting Rule 3(III)(B) and (C) of 2017 Rules which are in *pari materia* with paragraphs 4(1) and 4(2) of the Presidential Order.

68. From perusal of Rule 3(III)(B)(a) of 2017 Rules, it is evident that the same defines the local candidate with reference to study in such local area for four consecutive

years ending with the academic year in which he appeared or as the case may be first appeared in the relevant qualifying examination. Rule 3(III)(B)(b) defines the local candidate on the basis of his residence for a period of four consecutive years ending with the academic year in which he/she, as the case may be first appeared in the qualifying examination, if he has not studied in any educational institutions, if he/she has resided for a period of four years in that local area for a period not less than four years immediately preceding the date of relevant qualifying examination.

69. The aforesaid conclusion recorded by us with regard to interpretation of Rule 3(III)(B) and (C) of 2017 Rules also supported by the view taken by the Full Bench in **Bathina Rajya Shilpa** (supra) while interpreting the analogous provision under paragraphs 4(1) and 4(2) of the Presidential Order.

70. We may now ascertain whether any of the petitioners can be treated as a local candidate under Rule 3(III)(B) and 3(III)(C) of 2017 Rules.

71. From perusal of the facts, as pleaded in different writ petitions, which have been narrated by us in paragraphs 2 to 18 of this order, it is evident that none of the petitioners have studied in any educational institutions in local area for four consecutive years ending with the academic year in which he/she first appeared for the relevant qualifying examination. Similarly, none of the petitioners have resided for four consecutive academic years in local area ending with the academic year in which he/she first appeared for the relevant qualifying examination. It is pertinent to note that it is not the case of the petitioners that their case falls under rule 3(III)(B) of 2017 Rules.

72. Similarly, from perusal of the facts as pleaded in paragraphs 2 to 18 of this order, it is evident that none of the petitioners have studied in any educational institutions in local area for seven consecutive academic years ending

with the academic year in which he/she first appeared for the relevant qualifying examination. Similarly, none of the petitioners have resided for seven consecutive academic years in local area ending with the academic year in which he/she first appeared for the relevant qualifying examination.

73. For the aforementioned reasons, it is axiomatic that none of the petitioners either fall under Rule 3(III)(B) or 3(III)(C) of 2017 Rules. Therefore, the issue (vi) is answered in the negative and it is stated that the case of the petitioners does not fall under Rule 3(III)(B) or 3(III)(C) of 2017 Rules.

***(vii) Whether the Rule 3(III)(B) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 is arbitrary and is violative of Article 14 of the Constitution of India?***

74. At this stage, we may take note of the decision of the Hon'ble Supreme Court in **Ahmedabad Municipal**

**Corporation v. Nilaybhai R.Thakore**<sup>6</sup>. In the aforesaid case, the Hon'ble Supreme Court considered the validity of Rule 6(i) and Rule 7 of the Rules for admission to Smt N.H.L.Municipal Medical College. Rule 7 of the Rules confined admission to 85% of the students who had studied in educational institutions within the Ahmedabad Municipal Corporation. The validity of the said Rule was challenged before the Gujarat High Court. The High Court vide the judgment dated 12.05.1999 struck down Rule 7 of the Rules on the ground that classification made by Rule 7 providing admission to local students to the extent of 85% only from the educational institutions situated within the Ahmedabad Municipal limits was violative of Article 14 of the Constitution of India. Accordingly, the aforesaid Rule 7 was struck down. The Hon'ble Supreme Court in paragraph 10 has held as under:

**10.** But the question in this case is slightly different from the law laid down in the above-cited cases. Under Rule 7 of the impugned rules, "a local student" is defined as a student who has passed SSC/New SSC

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<sup>6</sup> (1999) 8 SCC 139

Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad municipal limits. As per this rule, it is only those students who qualify from educational institutions situated within the municipal limits who will be eligible to be treated as local students. While the permanent resident students of Ahmedabad city who for fortuitous reasons, as stated above, happen to acquire qualification from educational institutions situated just outside the municipal limits, namely, AUDA, will not be eligible for being treated as local students. The object of the rule is to provide medical education to the students of Ahmedabad who have acquired the necessary qualification, their selection being based on merit. If that be the object, can it be said that a classification based only on the location of the educational institution within or outside the municipal area is a reasonable classification? In our opinion, the answer should be in the negative. In the counter-affidavit filed on behalf of the Ahmedabad Municipality in the writ petition, it is stated that the Medical College in question was established to cater to the needs of the students of Ahmedabad city. If that be the object, in our opinion, the same would be defeated by restricting the definition of "local student" to those students who have acquired their qualification from institutions situated within the Ahmedabad municipal area, because as has happened in this case, the actual resident students of the Municipality whose parents would have contributed towards the revenue of the Ahmedabad Municipality

who for reasons beyond their control or otherwise, had acquired their qualification from institutions situated just outside the Ahmedabad municipal area i.e. within AUDA, would be denied the benefit of admission to the College which is run by the Ahmedabad Municipality. In our opinion, confining the definition of “local student” to only those students who acquired the qualification from educational institutions situated within the local area creates an artificial distinction from amongst the students who are residents of Ahmedabad city and those who may not be the residents of Ahmedabad city but who have studied in educational institutions situated in the Ahmedabad Municipal Corporation limits. We do not find any nexus in this type of classification with the object to be achieved. Let us test the logic of this rule with reference to a permanent resident of Ahmedabad who resides within the Ahmedabad municipal limits but is employed within AUDA. Can the Municipality refuse the benefit of its services to such a resident of the city only on the ground that he is employed in AUDA? The answer again can only be NO. Similarly, if the object of the rule is to provide medical education to the students of Ahmedabad because of its municipal obligations then a differentia within the class of students of Ahmedabad on the basis of their acquiring qualifications from schools within the Ahmedabad municipal limits or within the limits of AUDA would be arbitrary and violative of Article 14.



75. However, in paragraphs 13 and 14, it was held as under:

**3.** Though the High Court was right in coming to the conclusion that the rule in question does suffer from an element of arbitrariness, we are of the opinion that the remedy does not lie in striking down the impugned rules the existence of which is necessary in the larger interest of the institution as well as the populace of the Ahmedabad Municipal Corporation. The striking down of the rule would mean opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be opposed to the very object of the establishment of the institution by a local body. It is very rarely that a local body considers it as its duty to provide higher and professional education. In this case, the Municipality of Ahmedabad should be complimented for providing medical education to its resident students for the last 30 years or more. It has complied with its constitutional obligation by providing 15% of the seats available to all-India merit students. Its desire to provide as many seats as possible to its students is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Therefore, with a view to protect the laudable object of the Municipality, we deem it necessary to give the impugned rule a reasonable and practical interpretation and uphold its validity.

**14.** Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the rule in question is only a subordinate legislation and by declaring the rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied on by Lord Denning in the case of *Seaford Court Estates Ltd. v. Asher* [(1949) 2 All ER 155 (CA)] wherein he held:

“[W]hen a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, ... and then he must supplement the written word so as to give ‘force and life’ to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.”

This statement of law made by Lord Denning has been consistently followed by this Court starting in the case

of *M. Pentiah v. Muddala Veeramallappa* [AIR 1961 SC 1107] and followed as recently as in the case of *S. Gopal Reddy v. State of A.P.* [(1996) 4 SCC 596, 608 : 1996 SCC (Cri) 792 : AIR 1996 SC 2184, 2188] (SCC at 608 : AIR at p. 2188). Thus, following the above rule of interpretation and with a view to iron out the creases in the impugned rule which offends Article 14, we interpret Rule 7 as follows:

“Local student means a student who has passed HSC (*sic* SSC)/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who acquires the above qualifications from any of the high schools or colleges situated within the Ahmedabad Urban Development Area.”

76. Accordingly, the Special Leave Petition is allowed and Rule 7 which was interpreted in the manner indicated in paragraph 14 of the Judgment of the Supreme Court was upheld.

77. The Hon’ble Supreme Court in **Meenakshi Malik** (*supra*) dealt with a case of a candidate who had prosecuted her studies from classes 1<sup>st</sup> to 10<sup>th</sup> in Delhi and

completed her classes 11<sup>th</sup> and 12<sup>th</sup> examinations from a foreign country as her father was posted on deputation by the Government to a foreign country. The claim of the aforesaid petitioner for treating her as a local candidate was rejected on the ground that she failed to fulfil the requirement of study of last two years of her education i.e., classes 11 and 12 in Delhi. The Hon'ble Supreme Court in paragraphs 4 and 5 has held as under:

**4.** It seems to us that the qualifying condition that a candidate appearing for the Entrance Examination for admission to a Medical College in Delhi should have received the last two years of education in a school in Delhi is unreasonable when applied in the case of those candidates who were compelled to leave India for a foreign country by reason of the posting of the parent by the Government to such foreign country. There is no real choice in the matter for such a student, and in many cases the circumstances of the student do not permit her to continue schooling in India. It is, of course, theoretically possible for a student to be put into a hostel to continue her schooling in Delhi. But in many cases this may not be feasible and the student must accompany a parent to the foreign country. It appears to us that the rigour of the

condition prescribing that the last two years of education should be received in a school in Delhi should be relaxed, and there should be no insistence on the fulfilment of that condition, in the case of students of parents who are transferred to a foreign country by the Government and who are therefore required to leave India along with them. Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi providing that the last two years of education should be in a school in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government.

**5.** Accordingly, the denial of admission to the petitioner to a seat in one of the Medical Colleges in Delhi must be held to be unreasonable. It is not disputed that if the condition of schooling for the last two years in a school in Delhi is removed from the way, the petitioner would be entitled to admission in a Medical College in Delhi. In the circumstances, the petitioner is entitled to an order directing the respondents to admit her to one of the Medical Colleges in Delhi.

78. Thus, the Hon'ble Supreme Court has held that petitioner had no real choice and could not continue her schooling in Delhi as her father was posted to a foreign country on deputation. It was further held that rigour of condition prescribing that last two years education should be received in a school in Delhi should be relaxed and it was further held that the rules are intended to be reasonable and the prescription of classification for admission to medical colleges in Delhi deserves to be relaxed in case of candidates who had to leave the country with their parents being posted to a foreign country by the government.

79. A Division Bench of Bombay High Court in **Rajiv Purshottam Wadhwa v. State of Maharashtra**<sup>7</sup>, while dealing with a challenge to Rule 4.4 of Rules requiring a candidate to pass 10<sup>th</sup> standard examination from a school in State of Maharashtra relied upon decision of Hon'ble Supreme Court in **Ahmedabad Municipal Corporation** (supra). The

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<sup>7</sup> 2000 SCC OnLine Bom 359

rule was read down to cover student who is permanent resident of Maharashtra but studied outside Maharashtra. The relevant extract of paras 30 and 31 of the aforesaid decision read as under:

**30.** ..... The object of providing that a student in order to be eligible ought to have passed the S.S.C. Examination from an institution within the State is to make available the benefit of medical education to permanent residents of the State. That object would be defeated if the rules were struck down for then, students from all over the country would be entitled to admissions to medical colleges in the State, over and above the 15 percent quota available on an all India basis. Instead, the alternative approach which according to us will be, in the interests of justice is that Rule 4.4 should be interpreted and read to mean that (i) in order to be eligible for admission students must have passed the S.S.C. or an equivalent examination from an institution within the State of Maharashtra, (ii) However, the State Government can consider for the grant of admission to students who are domiciled in or are permanent residents of the State of Maharashtra, but who due to fortuitous circumstances may not have passed the 10th Standard Examination from within the State. We make it clear that it would

be entirely a matter for the State Government to determine as to when or on the basis of what considerations a student can be regarded as a permanent resident of the State of Maharashtra. The State Government may frame appropriate guidelines and or Rules and the case of every student who claims to be eligible for admission on the ground that he or she is a permanent resident of the State, though not having passed the 10th Standard Examinations from an institution located within the State shall be considered in accordance with the guidelines and or Rules to be framed by Government.

**31.** xxx xxx xxx

**32.** In the result, the petition will stand disposed of. We direct that Rule 4.4 of the Rules framed by the Maharashtra University of Health Sciences for Admission to Medical Colleges in the State for the year 2000-2001 will be interpreted to mean that students will be eligible for admission to the 1st year Medical Course in the State, if such students have passed the 10th Standard (S.S.C. or Equivalent Examination from within the State) from an institution within the State of Maharashtra. However, this will not operate to bar a student who is domiciled in or is a permanent resident of the State of Maharashtra from seeking admission though he or she may not



have passed the S.S.C. Examination from an institution within the State of Maharashtra. We direct that it would be open to the State Government to frame rules and/or guidelines to determine whether a student in a given case would be considered as being a permanent resident of the State of Maharashtra or domiciled in the State. The case of students who claim to be eligible under the aforesaid guidelines and/or Rules framed by the State Government including the petitioner shall be considered by the University by the application of those guidelines or the Rules in the facts and circumstances of each case. We, however, clarify that the observance of Rule 4.5 has to be ensured since the 12th Standard Examination is a qualifying examination for admission. The case of the petitioner shall be processed on the basis of his performance in the common entrance test. The admission, if any, granted to the petitioner will be provisional subject to his compliance with the requirement of domicile in Maharashtra. The writ petition will stand disposed of accordingly. No order as to costs.

80. A Division Bench of High Court of Karnataka in State of **Karnataka v B.Mahadvaiah**<sup>8</sup> has taken note of decision of the Hon'ble Supreme Court in **Ahmedabad Municipal Corporation** (supra) and has read down proviso to Entry 53 of the Karnataka Forest Department Services (Recruitment) Amendment Rules, 2003 and a notification regarding appointment of forest watcher.

81. It is also pertinent to note that the decision of the Hon'ble Supreme Court was taken note of by a Division Bench of Bombay High Court in **Ms. Priya Kedar Gokhale v. State of Maharashtra** (W.P.No.8539 of 2022) and the rule requiring the candidate to clear class 12<sup>th</sup> examination from an institution constituted or recognized by the Union or by a State Government situated in the State of Maharashtra was read down to provide relaxation or exemption to the candidates who are born in Maharashtra and whose parents are domicile of Maharashtra but due to fortuitous circumstances such as parents being in service

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<sup>8</sup> (2014) 2 AIR Kant R 578

of Government could not complete their SSC/HSC examination from the State of Maharashtra.

82. In the instant writ petitions, a candidate in order to be treated as a local candidate under Rule 3(III)(B) of 2017 Rules either has to study in any educational institution or to reside in a local area for four consecutive academic years ending with academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination.

83. On the basis of the criteria for treating the candidates as local candidates as mentioned in Rule 3(II)(B) and (C) of 2017 Rules, 85% seats are reserved for local candidates in non-statewide institutions, competent authority seats, i.e., seats earmarked from out of the sanctioned intake of seats in MBBS/BDS courses in each college to be filled by the Committee for Admissions constituted by the Competent Authority, and statewide institutions and the remaining 15% seats are treated as unreserved seats.

84. We may now examine whether the aforesaid requirement of treating a candidate as a local candidate which is based on requirement of study or residence in a local area for four consecutive academic years ending with the academic year in which a candidate appeared or as the case may be first appeared for the relevant qualifying examination is contrary and is violative of the mandate contained in Article 14 of the Constitution of India.

85. The 2017 Rules do not define either the expression 'local area' or 'local candidate'. Rule 2(2) provides that the words and expressions used but not defined in these Rules shall have the same meaning assigned to them in the Act unless otherwise defined by the Government of Health, Medical and Family Welfare Department or by the Competent Authority. The expression 'local area' and 'local candidate' have neither been defined in the Act and not by the Government of Health, Medical and Family Welfare as well as by the Competent Authority.

86. Rule 3(III)(B)(a) of 2017 Rules mandates a student to study in an educational institution in local area for four consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination. It is pertinent to note that Rule 3(III)(B)(b) of 2017 Rules mandates a student not to study in educational institution, but to reside in a local area for a period of four consecutive years ending with the academic year in which he/she may have first appeared for the relevant examination. The object of 2017 Rules is to provide medical education to the students who have cleared the relevant qualifying examination i.e., class 12<sup>th</sup> and have been selected on the basis of merit. The classification providing quota of 85% in any specialised institutions, competent authority seats and statewide institutions, only on the basis of study or residence in a local area cannot be treated as reasonable classification as prescribed in Rule 3(III)(B)(b) of 2017 Rules. The aforesaid Rule is based solely on the basis of the residence and has no rational nexus and object sought

to be achieved by 2017 Rules i.e., of providing medical education to the students including the local students. The permanent residents of State of Telangana may have cleared the relevant qualifying examination from an institution outside the local area due to reasons beyond their control and otherwise eligible would be denied the benefit of admission to 85% of the seats in non-statewide institutions, competent authority seats and statewide institutions merely on the basis of study or residence outside local area. There appears to be no justification for denying the benefit of admission to a student who is a permanent resident of State of Telangana who may not have studied or resided in local area for four consecutive academic years ending with academic year in which he/she appeared or as the case may first appeared for the relevant qualifying examination.

87. For the aforementioned reasons, it is held that Rule 3(III)(B) of 2017 Rules is arbitrary and violative of Article 14 of the Constitution of India.

***(viii) If so, whether Rule 3(III)(B) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 is required to be struck down or read down?***

88. At this stage, we may advert to the well settled legal principles with regard to reading down a provision. A Constitution Bench of Hon'ble Supreme Court in **Delhi Transport Corporation v. D.T.C. Mazdoor Congress**<sup>9</sup>, in paragraph 218 held as under:

**218.** On a proper consideration of the cases cited hereinbefore as well as the observations of Seervai in his book *Constitutional Law of India* and also the meaning that has been given in the *Australian Federal Constitutional Law* by Colin Howard, it is clear and apparent that where any term has been used in the Act which per se seems to be without jurisdiction but can be read down in order to make it constitutionally valid by separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the legislature which passed the said enactment by reading down the provisions of the Act (*sic*). This, however, does not under any

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<sup>9</sup> 1991 Supp (1) SCC 600

circumstances mean that where the plain and literal meaning that follows from a bare reading of the provisions of the Act, Rule or Regulation that it confers arbitrary, uncanalised, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principles of natural justice and equality before the law as envisaged in Article 14 of the Constitution, cannot (*sic*) be read down to save the said provision from constitutional invalidity by bringing or adding words in the said legislation such as saying that it implies that reasons for the order of termination have to be recorded. In interpreting the provisions of an Act, it is not permissible where the plain language of the provision gives a clear and unambiguous meaning can be interpreted by reading down and presuming certain expressions in order to save it from constitutional invalidity. Therefore, on a consideration of the above decisions, it is impossible to hold by reading down the impugned provisions of Regulation 9(b) framed under Section 53 of the Delhi Road Transport Act, 1950 read with Delhi Road Transport (Amendment) Act, 1971 that the said provision does not confer arbitrary, unguided, unrestricted and uncanalised power without any guidelines on the authority to terminate the services of an employee without conforming to the principles of natural justice and equality as envisaged in Article 14 of the Constitution of India. I am, therefore, constrained to uphold the judgment of the Delhi High Court in C.W.P. No. 1422 of 1985 and



dismiss Civil Appeal No. 2876 of 1985. I allow Civil Appeal No. 1115 of 1976 and agree with the order proposed to be passed thereon by the learned Chief Justice. The other appeals as referred to in detail in the judgment of the learned Chief Justice be placed before the Division Bench of this Court to be disposed of in accordance with the observations made herein. I agree with conclusion arrived of by my learned brother K. Ramaswamy, J.

89. The aforesaid decision was referred to with approval in **B.R.Enterprises v. State of Uttar Pradesh**<sup>10</sup>. The decision in **B.R.Enterprises** (supra) was referred to with approval in **Union of India v. Ind-Swift Laboratories**<sup>11</sup>. The Hon'ble Supreme Court in **Ahmedabad Municipal Corporation** (supra) reversed the decision of Gujarat High Court which struck down Rule 7 of the Rules and instead read it down.

90. In the light of the aforesaid well settled legal principles, we now examine whether Rule 3(III)(B) of 2017 Rules should be read down. The golden rule of interpretation is of respecting the wisdom of legislature on the ground that they are aware of the law and would never

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<sup>10</sup> (1999) 9 SCC 700

<sup>11</sup> (2011) 4 SCC 635.

have intended for an invalid legislation. In somewhat similar fact situation, Hon'ble Supreme Court in **Ahmedabad Municipal Corporation** (supra) with a view to iron out the creases in the impugned rule i.e., in Rule 7 of the Rules, interpreted the Rule in the manner indicated in paragraph 14 of the said judgment referred supra. Similar view was taken by a Division Bench of Bombay High Court in **Rajiv Purshottam Wadhwa** (supra). Rule 4.4 of Maharashtra Rules was read down to include permanent residents of State of Maharashtra.

91. We have already held that Rule 3(III)(B) of 2017 Rules is violative of Article 14 of the Constitution of India. An interpretation which advances the object and purpose of the Act has to be preferred. The object of Rule 3(III)(C) of 2017 Rules is to provide reservation for local candidates. In case the rule is struck down then students from all over the country shall be entitled to admission in medical colleges. Therefore, instead of striking down Rule 3(III)(B) of 2017 Rules, it needs to be read down. Therefore, we read

down Rule 3(III)(B) of 2017 Rules and it is held that the aforesaid Rule shall not apply to permanent residents of the State of Telangana. Thus, by reading down the provision in the manner indicated above shall also be in consonance of object of Article 371D(2)(b)(ii) of the Constitution of India i.e., of making special provision to the people of different parts of State for admission to educational institutions. Therefore, the validity of Rule 3(III)(B) of 2017 Rules is upheld as interpreted by us. Accordingly, the issue (viii) is answered.

92. Before proceeding to answer issue (ix), at this stage it is apposite to deal with the submissions made on behalf of the learned counsel for the University. The Hon'ble Supreme Court in **C.Surekha** (supra) has not dealt with the validity of the Presidential Order. Therefore, the contention that the petitioners are not entitled to any relief does not deserve any acceptance. Similarly, the decision in **Meenakshi Malik** (supra) and **Ms. Priya Kedar Gokhale** (supra) do not apply to the fact situation of the present

cases does not deserve acceptance. The contention made by learned standing counsel for the University that the case of the petitioners does not fall under Rule 3(III)(B) of 2017 Rules deserve acceptance. Section 95 of the Andhra Pradesh Reorganization Act has no material bearing on the controversy involved in this batch of writ petitions as the same deals with quota of admission in educational institutions, whereas primary issue in this batch of petitions is with regard to the validity of Rule 3(III)(B) of 2017 Rules.

***(ix) Relief to which the petitioners are entitled?***

93. The petitioners claim themselves to be permanent residents of State of Telangana. It is, therefore, directed that in case petitioners produce Residence Certificate issued by a competent authority of Government of Telangana within a period of one week from today before the University, the petitioners shall be treated as local candidates. Needless to state that, the University shall

consider the claim of the petitioners as local candidates as per their merit for admission to MBBS/BDS courses for the academic year 2023-2024.

94. The writ petitions are accordingly disposed of.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**ALOK ARADHE, CJ**

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**T.VINOD KUMAR, J**

29.08.2023

Note: LR copy be marked.  
(By order)  
Pln/Vs