



Suzana

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.1822 OF 2025 (FILING)**

Niyan Joseph Savio Marchon  
Son of Aires Marchon, 50 yrs  
Major of age, Indian National  
R/o H. No. 168, Marchon Building,  
3rd floor, Opp. Lohia Maidan, Mestabhat,  
Salcete, Margao, South Goa

**.... Petitioner**

*Versus*

1. State of Goa  
Through Its Chief Secretary,  
Having office at, Secretariat,  
Porvorim-Goa.
2. The Director of Technical Education  
DTE, Building,  
Alto, Porvorim-Goa. **... Respondents**

**Mr S. S. Kantak, Senior Advocate with Ms Neha Kholkar and Ms Saicha Desai, Advocate for the Petitioner.**

**Mr Devidas J. Pangam, Advocate General with Mr Shubham S. Priolkar, Additional Government Advocate for the Respondents.**

**CORAM: BHARATI DANGRE &  
NIVEDITA P. MEHTA, JJ.**

**Reserved on: 07<sup>th</sup> August, 2025.  
Pronounced on: 12<sup>th</sup> August, 2025.**

**JUDGMENT:** (Per. Bharati Dangre, J.)

1. The Petitioner whose ward, Ms. Asriel Joselie Olinda Marchon, who has appeared for and cleared the National Eligibility Entrance Test (NEET) and an aspirer of securing admission to MBBS, has approached this Court, by invoking the writ jurisdiction for issuance of appropriate writ or order or direction to quash and set aside clause 5.7 of the prospectus issued by Director of Technical Education, Goa, which has reserved 3% seats in favour of Children of Central/State Government Employees and Persons in Private Occupations (CSP).

We have heard learned Senior Counsel, Mr Subodh Kantak for the Petitioner and the learned Advocate General, Mr Pangam, for the Respondent State and Director of Technical Education.

By consent of parties, the Petition is taken up for final hearing on the pleadings being concluded, hence issue 'Rule', which is made returnable forthwith.

2. The Director of Technical Education issued a common prospectus for admission to the First Year of Professional Degree Courses, Session 2025-26, covering various Streams including MBBS, Dentistry, BDS, etc.

The prospectus being placed before us as Exhibit A set out the Rules governing admissions to the Professional Degree Courses including MBBS, BDS, BHMS, BAMS in the Colleges within the State of

Goa, make it imperative for all candidates to appear and have a valid score in NEET-UG 2025 and fulfill the eligibility criteria as specified therein. It stipulate that the merit list for the courses will be based on the NEET-UG 2025 score/rank and it prescribe for reservation of seats for the Professional Courses. The eligibility of candidates is set out in Rule 4. What is relevant for our consideration is Rule 5 under the caption, "Classification of Categories"; 5.1 prescribing for 'General Category', to the following effect:

#### **“5.1 CATEGORY 1 – GENERAL**

An applicant belonging to General Category must have studied and passed Std. XIIth or equivalent examination from schools/colleges in the State of Goa, and must have resided in Goa continuously for a minimum period of 10 years (5 years, for those whose either of the parent/grandparent, is born in Goa), immediately preceding the last date/month of application OR be son/daughter of Government of Goa deputationists or employees posted outside Goa and must have passed the qualifying examination from Central Board of Secondary Education, New Delhi or other recognised State Boards.

An applicant who is found eligible according to the above criterion in a particular year shall continue to be considered as eligible for the subsequent 3 years.”

3. In addition to the aforesaid, the following categories are specified under the distinct heading:-

- 5.2 Category 2 – SC (2%)**
- 5.3 Category 3 – ST (12%)**
- 5.4 Category 4 – OBC (27%)**

- 5.5 Category 5 – PwD (3%)
- 5.6 Category 6 – FF (1%)

In continuation, category 5.7 which is subject to challenge in the present Petition read thus:-

**“CATEGORY 7 - CSP (3%)**

Applicants who don't meet the residential and other requirements of General Category, and whose either of the parents belong to one of the following subcategories, shall be eligible for seats reserved under this category.

- (a) An employee of Central Government and Central Government Public Sector Undertakings, including Defence and Para-Military personnel, serving in the State of Goa in the academic year (June 24 onwards) preceding the year of admission or transferred to Goa till the date of submission of application form for admission. OR
- (b) An employee of Goa State Government including those of Goa State Government Public Sector Undertakings and Educational Institutions recognised by Govt. of Goa, but not an employee on daily wages/ NMR/ work charged. OR
- (c) A person residing in the State of Goa and the applicant must have studied and passed HSSC (Std. XIIth) examination from schools/colleges in the State of Goa.
- (d) An employee of Central/State Government and Central/State Government Public Sector Undertaking, including Defence and Para-Military personnel who has served in Goa and has retired from their service, when posted in the State of Goa, and their wards continued to study in the schools in State of Goa, and pass the qualifying exam from schools in Goa.”

In addition, there are also categories of ESM-1%, Category 10 – GN-(2%), Category 11 – NRI (up to 5%), Category 12 – OGA.

4. Mr Kantak, the learned Senior Counsel in support of the reliefs in the Petition would submit that for Professional Degree Courses like MBBS, it is well settled that the selection shall be based purely on "merit" and merit alone shall govern the process for admission. He would submit that it is not permissible to provide reservation in the Professional Courses except reservation that is permitted by the Constitution or by a statute.

Relying upon the enabling power of clause (4) of Article 15, the learned Senior Counsel would submit that the said provision is in form of an enabling power which permit the State, in making a special provision, by law, for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes insofar as such special provision relating to an admission to educational institutions which shall include even the private educational institutions whether aided or unaided by the State other than the minority educational institutions. Further, by inviting our attention to clause (6) of Article 15 inserted by Constitutional 103<sup>rd</sup> Amendment with effect from 14.01.2019, he would submit that the provision empower the State to make any special provision in a similar manner for the economically weaker section of citizens other than the Classes mentioned in clause (4) and (5) of the Constitution.

Apart from this, according to him, the reservation is only permitted if provided under a statute and this include the reservation

for physically handicapped persons, i.e. PwD as provided in The Rights of Persons with Disabilities Act, 2016.

It is, therefore the submission of Mr Kantak that any other reservation that is not covered by Constitution nor is prescribed by any statute is impermissible as it would amount to dilution of merits and it is well settled by catena of decisions that for MBBS/post graduation courses in Medicine, merit alone should be the criteria.

He would also place reliance upon the Circular dated 21.07.2022 issued by the Government of Goa, with reference to the complaints received by the National Commission for Backward Classes for not implementing the reservation rules as the said Circular has reiterated as below:

“All the Government Colleges, Aided Colleges and Goa University shall strictly implement the reservation rule in admission for OBC Categories (27%). Therefore, Colleges shall maintain the reservation as follows:

|                                      |     |
|--------------------------------------|-----|
| 1) Other Backward Classes (OBC)      | 27% |
| 2) Schedule Caste (SC)               | 2%  |
| 3) Schedule Tribes (ST)              | 12% |
| 4) Economically Weaker Section (EWS) | 10% |

All the Government Colleges, Aided Colleges and Goa University shall strictly implement the reservation rule in admission for all above categories in all Indian seats and local domicile seats.”

5. In short, according to Mr Kantak, the reservation of 3% provided in clause 5.7 is contrary to the Government Circular.

By inviting our attention to Clause 5.7, which has attempted to create reservation in favour of CSP - Central/State Government employees and persons with private occupations, he would submit that by reserving 3% seats for the applicants, who do not meet the residential and other requirements of General Category in respect of those children whose either of the parents fall in any of the sub-categories, the Respondent No.2 has created an artificial classification.

Inviting our attention to clause (b) in respect of an employee of Goa State Government, including the employee of Goa State Public Sector Undertakings and Educational Institutions recognised by Government of Goa, he would submit that the provision has created two classes: one, of the employees of State Government who are covered under the General Class, i.e. clause 5.1 and one created by clause (b) which exempt the applicability of the criteria of residence in the State for past 10 years.

Similar objection is raised as regards reservation provided in clause (d) of 5.7, by creating a class of State Government employees, who had served in Goa and retired from service and when posted in State of Goa, their wards continued to study in schools in the State of Goa and passed the qualifying examination in the State of Goa.

It is therefore the submission of Mr Kantak that the sub-classification between the employees of the State of Goa, which is attempted to be created is not a reasonable classification and furthermore, it has no nexus with the object which is sought to be achieved, if at all the object was to confer some benefits on the wards of the employees who were serving State of Goa and had moved out for temporary period.

According to the learned Senior Counsel, it would be permissible for the State to relax the requirement of continuous residence in the State, in favour of certain fortuitous circumstances but definitely no reservation can be provided by specifically carving out certain percentage, of the available seats for First Year MBBS.

6. The learned Advocate General Mr Pangam, by placing reliance upon the affidavit of Directorate of Technical Education affirmed on 04.08.2025 would submit that the purpose of CSP reservation is to prevent the exclusion of deserving candidates solely on account of services related mobility which is beyond the control of the applicant.

Raising a preliminary objection about the maintainability of the Petition, at the instance of a person who is not impacted by the decision, he would submit that the Petitioner's ward in any case, will not be in a position to secure a seat of General Category on her merits

and for this purpose he would place before us the tentative allocation of seats in favour of the candidates on their standing on merit.

Apart from this, it is the submission of Mr Pangam that the reservation of 3% seats of CSP operate independent of the General Category and constitute a separate, limited carve-out intended for distinct class of applicants, who do not meet the eligibility requirements of General Category due to peculiar circumstances of their parents' service conditions. He would submit that there exist no immediate or direct prejudice on account of CSP reservation and therefore the Petitioner lacks locus in absence of actual injury or legal prejudice. He would rely upon the specific statement in the affidavit to the following effect:

“11. I say that the reservation of 3% seats (totally 5 seats) for the CSP Category is a classification founded on intelligible differentia and bears a rational nexus to the objective sought to be achieved, thereby satisfying the test of reasonable classification under Article 14 of the Constitution of India. I say that the rationale underlying the said reservation is to ensure equitable access to professional education for children of personnel engaged in public service, particularly those in transferable roles who, due to the nature of their employment, may not fulfil the residential or educational eligibility criteria applicable to the General Category.

12. I say that the inclusion of various sub-categories under the CSP reservation reflects a conscious policy decision to address the specific disadvantages faced by children of government employees, defence and para-military personnel, and other

public sector functionaries who are either transferred to Goa or have rendered service in the State.”

7. The learned Advocate General would place reliance upon the decision of the learned Single Judge of this Court in **United Tribals Associations Alliance and Another v/s. State of Goa Through its Chief Secretary and Others**<sup>1</sup> as well as the decision in case of **Kumari Chitra Ghosh And Another v/s. Union of India And Others**<sup>2</sup>. In addition, reliance is also placed upon the decision in case of **Yellamalli Venkatapriyanka v/s. State of Maharashtra, through its Department of Medical Education & Drugs Mantralaya and Another**<sup>3</sup> and the decision in **Writ Petition No.4883 of 2023** in case of **Apurva Manohar Kumbhalkar v/s. State of Maharashtra** decided on 10.11.2023 in support of his submission that the benefit can always be granted to the candidates who have suffered on account of their parents being subjected to fortuitous circumstances, and do not fall within the General Category because of the peculiar circumstances involving their condition of service.

8. What is assailed before us is the provision in the Prospectus of 2025-26 carving out the category of CSP and this is a category which

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1 2020 SCC OnLine Bom 938

2 (1969) 2 SCC 228

3 2018 SCC OnLine Bom 10293

would cover the applicants who do not meet the requirement of residence or other requirements of General Category.

Clause 5.1, which prescribe of General Category, make it imperative for the Applicant to be compliant with two requirements: (a) to have studied and passed Std XII or equivalent examination from schools/colleges in the State of Goa; (b) a resident of Goa with continuous minimum period of 10 years (5 years for those whose either of the parents/ grandparents is born in Goa) immediately preceding the last date/month of application.

The General Category also cover the son/daughter of Government of Goa deputationists or employees posted outside Goa, provided the qualifying examination is passed from the Central Board of Secondary Education, New Delhi or other recognised Boards.

This Clause itself grant relaxation in residential requirement, which is applicable to categories 1 to 6 and 8 in Clause 5.1 and this clause is intended to take care of certain fortuitous circumstances as it allows relaxation in respect of the period spent by the applicant outside Goa on account of posting, training, deputation of either of his parent being Goa State Government Employee and still he shall be considered to be continuous resident for 10 years. Further, relaxation is also offered to an applicant who, under the scheme of exchange programme as the student of Navodaya Vidyalaya from Goa is compelled to reside

outside Goa and is unable to fulfil the 10 years continuous stay requirement. Similarly, if an applicant is born in Goa and has studied and passed final examination from a school/college in Goa, and has minimum residence of over 10 years, then the condition of continuous residence is relaxed.

9. Clause 5.7 has carved out a class distinct from the General Category, to confer benefit on the applicants whose either of the parents fall in any of the sub-categories set out therein and this contemplate: (a) an employee of Central Government/Central Government Public Sector Undertaking including Defence and Para-military personnel, serving in the State of Goa in the academic year preceding the year of admission or transfer to Goa till submission of application form for admission; (b) an employee of Goa State Government including that of Goa State Government Public Sector Undertaking and educational institutions recognised in State of Goa; (c) a person residing in State of Goa and the applicant studied and passed XII Standard from school/college in Goa; (d) an employee of Central/State Government and Central Government Public Sector Undertaking including Defence and Para-military who have served in Goa and have retired from its service, when posted in the State of Goa, and their wards continued to study in the schools in State of Goa, and pass the qualifying exam from schools in Goa.

10. In providing such reservation, the stand of the State Government is, the reservation is provided to prevent the exclusion of deserving candidates solely on account of their parents' service-related mobility and since the aspirant of the medical college should not suffer because the posting of his parent is not within his control and that the policy recognise the contribution of Government servant by providing educational concession to children of such personnel.

11. The question before us is whether such reservation in form of a provision, in clause 5.7 is permissible for admission in the Professional Degree Course 2025-26 and here we are concerned with the admission to First Year MBBS, BBS, BDS, BHMS, BAMS, AHS and B.Sc. in Nursing Degree Courses in pursuant to clearance of NEET-UG-2025.

The Preamble of the Indian Constitution speaks of Equality of Status and of Opportunity and Article 14 of the Constitution prescribe that the State shall not deny to any person Equality before the law or Equal protection of laws within the territory of India. Article 14 therefore prohibits class legislation and make it imperative to treat identically situated persons equally in its applicability of law or the equal protection of laws. It connotes that everyone is equal in the eyes of law and State must ensure equal treatment to all.

Article 15, is a specific provision intended to prohibit discrimination based on religion, race, caste, sex, place of birth, and

clause (1) of Article 15 clearly prescribe that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Article 15 aims to promote equality by prohibiting discrimination while it also enable affirmative action to uplift marginalised sections of community.

What is relevant is clause (4) and (5) of Article 15 along with clause (6) which has been inserted by the Constitutional 103<sup>rd</sup> Amendment, introducing one more class, i.e. Economically Weaker Section of citizens. We deem it appropriate to re-produce the said clauses:

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

..

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

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.”

12. Though not germane for our case, but it would be appropriate to make a reference to Article 16, which ensures equality of opportunity in matters of public employment to any office under the State and though clause (2) prohibit discrimination on various grounds, one of the ground which is not set out in Article 15 is the ground of ‘residence’ as discrimination on this ground is also prohibited in regards to any employment or office under the State. Apart from this, the enabling power of the State permit it to provide for reservation of appointments or posts in favour of the backward class of citizens, which, in the opinion of the State is not adequately represented in the services under the State.

At this juncture, it is also relevant to refer to Article 46 of the Constitution, being part of Chapter IV, the Directive Principles of State Policy and the said provision reads thus:

“46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

In the constitutional scheme, which has equality before law, a negative concept implying that no one is above law and all are equally subject to the law of land, as it ensure that everyone is treated equally regardless of their social status, wealth or other characteristics. Another facet of Article 14, involving “Equal Protection of Law”, a positive concept convey that same law should be applied to individuals situated in similar situations, i.e. similar individuals should be treated alike and like should be treated alike.

Article 15 prevent State from discriminating against any individual or group of individuals based only on religion, race, caste, sex, place of birth and as far as Article 16 also, on the basis of residence.

13. The concept of equality is therefore a cornerstone of just and fair legal system ensuring that each person shall be treated equally. However, there are exceptions carved out under Article 15 and Article 16, which enable the State to make any special provision for women and children under clause (3) and clause (4), (5) and (6) also act as an exception, as it enable the State from making any special provisions for the distinct classes set out therein.

This power is available to be exercised for advancement of socially or educationally backward class of citizens or for the Scheduled Caste and Scheduled Tribes. Clause (5) of Article 15 empower the State irrespective of embargo imposed in Article 15 or in sub-clause (g) of clause (1) of Article 19, which has guaranteed the right to practice any profession or carry on any occupation, trade or business to all citizens and the said provision permit the State to make special provisions for the advancement of any socially and educationally backward class of citizens or for the Scheduled Caste and Scheduled Tribes in relation to their admission to educational institutions, by law. This power of the State to make a provision for this class extend to the private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

One more clause which now is covered within the enabling power of the State is clause (6) of Article 15, which permit the State in making any special provision for advancement of economically weaker section of citizens other than the classes mentioned in clause (4) and (5) and this would also extend to their admission to educational institutions including private educational institutions whether aided or unaided by the State. In essence, Article 15(4) lays the foundation for affirmative action to promote equality.

14. A conjoint reading of Article 14 along with the Article 15(1), Article 15(4), Article 15(5) and Article 15(6) which has empowered the State to exercise the power of making any special provision for the classes mentioned therein, is the source of the State to confer certain special benefits in favour of these classes, without offending clause (1) of Article 15 and this may extend to making of any special provision for advancement of these classes and shall extend to their admission to educational institutions. This enabling power of the State permit it to reserve certain number of seats in the educational institutions including private educational institutions whether aided or not, in favour of Scheduled Caste and Scheduled Tribes, socially and educationally backward class of citizens and also economically weaker section as introduced by 103<sup>rd</sup> Amendment in the Constitution.

This enabling power of reservation ensure genuine representation to the persons belonging to backward classes and Scheduled Caste and Scheduled Tribe, without offending the duty of the State to ensure equality as contemplated under Article 14. Thus, it is a combination of factors like social backwardness, economic status and the need to ensure representation from various communities which becomes the source of power for reserving the seats in favour of these classes as it would aim in promoting social justice and equitable access to professional education for the marginalised classes identified by the Constitution to be the Scheduled Caste and Scheduled Tribes, Socially

and Educationally backward classes and now even the Economically Weaker Sections of citizens. The reservation for these classes as specifically provided in Article 15, is an affirmative action based on the enabling power of the State and this achieves the overall object of ensuring representation of ‘Socially and Educationally backward classes of citizens or the Scheduled Caste or Scheduled Tribes.’

15. In **N. Vasundara v/s. State of Mysore**<sup>4</sup>, the Apex Court while considering the constitutional validity of rules for admission to pre-professional courses in medical colleges prescribing condition of residence for 10 years, held that the rule do not suffer from vice of unreasonableness and the word ‘domicile’ used in the said rule was to convey the idea of intention to reside or remain in the State of Mysore.

Holding that classification based on residence does not impinge upon the principle of equality, the Apex Court referred to the observations in case of **D.P. Joshi v/s. State of Madhya Bharat and Another**<sup>5</sup>, which clarified the term ‘bona fide residence’ means the residence with domiciliary intent. The observation which is relevant for our purpose in permitting the reservation on the basis of domicile read thus:

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<sup>4</sup> (1971) 2 SCC 22

<sup>5</sup> ([1955] 1 S.C.R. 1215

"In our view the word "domicile 'a used in r. 3, in the present case is also used to convey the idea of intention to reside or remain in the State of Mysore. If classification based on residence does not impinge upon the principle of equality enshrined in Art. 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State of Mysore. It is true that it is not possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors: they have indeed a fundamental right as citizens to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for further studies or even otherwise. But these possibilities are permissible and inherent in our constitutional set-up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule. The problem as noticed in Minor P. Rajendran's case and as revealed by a large number of cases which have recently come to this Court is that the number of candidates desirous of having medical education is very much larger than the number of seats available in medical colleges. The need and demand for doctors in our country is so great that young boys and girls feel, that in medical profession they can both get gainful employment and serve the people. The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical, education to the available

candidates which would serve the object and purpose of providing broad- based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups therefore cannot be challenged on the ground of inequality violating Art. 14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness.”

16. In **Minor P. Rajendran v/s. State of Madras & Ors<sup>6</sup>.**, the Apex Court struck down the rule allowing admission to the medical college made on district-wise basis. The Rule 8 providing reservation in the general pool and seats reserved for socially and educationally backward classes to be allotted amongst various districts on the basis of the ratio of population of each district to the population of the State was under challenge though the Rule contemplated that district-wise allocation will not apply to the seats reserved for Scheduled Caste and Scheduled Tribes.

In **Minor A. Periakaruppan v/s. State of Tamil Nadu<sup>7</sup>**, dealing with the selection to the Medical College on unit-wise basis, it was held that it is not valid inasmuch as the seats were distributed on unit-wise basis, directing that the selection shall be made on State-wise basis by selecting the candidates on their merits and testing them qua the other eligibility criteria.

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<sup>6</sup> (1968) SC 1012

<sup>7</sup> 1971 (1) SCC 38,

It was clarified that the Government should always keep under review the question of reservation of seats and only classes which are really socially and educationally backward should be allowed to have the benefit of reservation and reservation of seats should not be allowed to become a vested interest.

17. In **Dr. Jagdish Saran And Others v/s. Union of India<sup>8</sup>**, when the constitutionality of reservation of seats for local candidates in professional courses was called in question, the three Judge Bench of the Apex Court specifically held that there is no infringement of Article 15 if special provision is made for concessions given to disabled and handicapped groups and areas and Justice V. R. Krishna Iyer, (as His Lordship then was), significantly remarked thus:

“29. We must go to the roots of the creed of equality and here the case of State of Kerala v. N. M. Thomas has critical relevance. That decision dealt with the Scheduled Castes and Art. 16 and certain facilities other than reservation. But the core reasoning has crucial significance in all cases of protective discrimination. The process of equalisation and benign discrimination are integral, and not antagonistic, to the principle of equality. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is sophistry to argue that progressive measures to eliminate group disabilities and promote collective equality are anathema on the score that every individual has entitlement on pure merit of marks. This narrow 'unsocial' pedantry subverts the seminal essence of equal opportunity even for those who are humble and

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<sup>8</sup> (1980) 2 SCC 768

handicapped. Meritocracy cannot displace equality when the utterly backward masses labour under group disabilities. So we may weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity. So we hold, even apart from Art. 15(3) and (4), that equality is not negated or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit. Indeed, Art. 14 implies all this, in its wider connotation, and has to inform the interpretation of Art. 15.”

Recording that when the aspiring candidates do not belong to the educationally backward class, institution-wise segregation or reservation was held to be not contemplated by Article 15 but the basic principle to be adhered to was held to be equal opportunity and which shall be judged by not creating artificial compartmentalisation using the mask of handicaps but, it was specifically ruled that if a region is educationally backward or deficient in medical services and there occur serious educational and health service disparity for that human region, it must be redressed by equality and service minded welfare state. Provision for higher ratio of reservation in such cases hardly militates against the equality mandate viewed in the perspective of social justice is what was held.

However, it was also noted that if the State finds that only students from backward region, when given medical education will

cater to that area, being drawn towards it by sense of belonging as those from outside will leave for the cities or their own region, which may require evolving the policy of preference or reservation for students of that University, it was held that such measures which make equality of opportunity for medical education and medical services for backward human sectors in tune with Article 14 and 15 of the Constitution of India.

These factors were considered to be exceptional circumstances but not as a matter of course in every University and for every Course. For this purpose, a safeguard was evolved as below:

“40. Coming to brasstacks, deviation from equal marks will meet with approval only if the essential conditions set out above are fulfilled. The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage. The quantum of reservation should not be excessive or societally injurious measured by the over-all competency of the end-product, viz. degree-holders. A host of variables influence the quantification of the reservation. But one factor deserves great emphasis. The higher the level of the speciality the lesser the role of reservation. Such being the pragmatics and dynamics of social justice and equal rights, let us apply the tests to the case on hand.

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42. M.B.B.S. is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups,

institutionwise chosen, without injury to public welfare. It produces equal opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise. Moreover, the better chances of candidates from institutions in neglected regions setting down for practice in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. After all, it is quite on the cards that some out of these candidates with lesser marks may prove their real mettle and blossom into great doctors. Again, merit is not measured by marks alone but by human sympathies.

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

**18. In Dr. Pradeep Jain and Others v/s. Union of India and Others<sup>9</sup>,** the rule for reservation of seats for residents of the State or the students of the same University was once again tested by applying on the touchstone of Article 14 and it was held that total reservation of the seats would violate Article 14 but having regard to socio-economic disparities and inequalities, reservation of certain percentage of seats was valid, though admission on All India basis was directed to be an ultimate goal. The Bench specifically held that equality of opportunity cannot be made dependent upon where a citizen reside and the primary

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<sup>9</sup> 1984 (3) SCC 654

consideration in selection of candidates for admission to the medical colleges must be Merit and this was so reflected in the following words:

“The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizen in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub- standard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by whole-sale sacrifice of talent at the thresh-hold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.”

19. In **Nidamarti Maheshkumar v/s. State of Maharashtra**<sup>10</sup>, the regionwise scheme adopted by the State Government was held to be resulting in denial of equal opportunities and thus violative of Article 14 as such Rule B(2) was set aside as it was held that it is not possible to accept, in view of this provision, a student from a school or college, situated within the jurisdiction of a particular University, would not be eligible for admission to medical college or college situated in the jurisdiction of another University but would be confined only to medical college within the jurisdiction of the same University. With the conclusion drawn that such admission to medical colleges cannot be sustained as it would violate the mandate of equality clause by compartmentalising State into different regions and would result into prohibiting a student from one region to be migrated to another region for medical education and such reservation to the extent of 100% was held to be impermissible. However, reservation of preference in respect of certain percentage of seats legitimately made in favour of those studying in schools and colleges within the region of a particular University, in order to equalise opportunities of medical admission on a broader basis and to bring about real and not formal act, actual and not merely legal equality, was held to be an acceptable norm. However, by holding that not more than 70% of the total number of seats shall be so reserved for students who have studied in schools and colleges situated in that region, it was held that at least 30% of the open seats shall be

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<sup>10</sup> 1986 2 SCC 534

available for students from other regions within the State.

20. From the aforesaid authoritative pronouncements, it is evidently clear that the scheme for admission to medical colleges may depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals and therefore, the claim of backwardness either of a region or maybe of a class as a whole, was found to offer justification, as it would ultimately aim to remove existing inequality and promote welfare based equality for the residents of backward region or because of the educational and social backwardness of that particular class.

It is this test, which must be applied by us when we determine the validity of Clause 5.7.

21. By applying the test of merit, when we peruse Clause 5.7, which has created a special category and reserved 3% seats in Goa Medical College, Bambolim, with the intake capacity of 180 seats, i.e. 5 seats, we must appreciate the argument of Mr Kantak that it dilutes the merit and also there is no power with the State to provide such a reservation and we agree with him on both counts.

Though the learned Advocate General has attempted to persuade us by stating that the State is empowered to take a policy decision for

the benefit of a particular class and the overall object of the State in introducing this reservation, was to benefit the children of a class of employees, being the employees of State of Goa or the employees of Central Government/Central Government Public Sector Undertakings, including Defence and Para-military personnel, who on account of their service exigencies like transfer, deputation and retirement, compelled their ward not to be compliant with the twin conditions as set out in clause 5.1, which made it impossible for their ward to pass the qualifying examination from the school/college from the State of Goa and for this very reason was not residing in Goa for minimum period of 10 years preceding the last date/month of the application.

One thing is absolutely clear to us, which we must spell out is that any ‘reservation’ in form of the benefits conferred upon any class must withstand the test of equality as the Constitution prohibits discrimination on various specific grounds set out in Article 15(1) and if at all a preferential treatment in form of reservation is contemplated by the State, then it shall so do it, by law and since Article 15(4) is an enabling power of the State, it definitely is not to be construed as a duty or obligation. When the State attempt to create reservation in favour of any class which is not covered by the Constitution, then it would be necessary for it to introduce it by law and not because it feels it appropriate to do so.

The learned Advocate General has urged before us that the Executive power of the State is co-extensive with its Legislative power and it shall extend to the matters to which the legislature had the power to make laws and he would invoke provision in form of Article 162 of the Constitution, but we must just observe that this power is ‘subject to the provisions of the Constitution’ and is hedged by the proviso appended thereto, which clearly state that, the Executive power of the State shall be subject to, and limited by, the Executive power expressly conferred by the Constitution or by any law made by the Parliament upon the Union or authorities thereof.

There can be no quarrel about the proposition that as far as the field of education is concerned, the State Legislature, by virtue of Entry 25 in the Concurrent List, is empowered to make law in the field of education which shall include medical education. However, we do not find this power being exercised by the State as, had it been a case that it would have by law provided a reservation, it would have been tested on different parameters, of course subject to the power of Parliament under Entry No.66 in the Union List but the State has not provided the reservation by ‘law’ as contemplated under Article 15(5) and it has simply introduced the reservation, maybe by executive fiat in Clause 5.7, which in our view, is impermissible. While permitting reservation of seats for all those clauses covered by clause (4), (5) and (6) of Article 15, other than that, if at all the State intend to provide for any

reservation as a class, it may do so by enacting a law and once such law on the basis of reservation is held to be permissible, is the Rights of Persons with Disabilities Act, 2016 and that is how there is PwD reservation in the Prospectus.

22. The classification of categories in the Prospectus itself is a reflection of the permissibility of the constitutional and statutory reservation as seats are reserved for Scheduled Caste (2%), Scheduled Tribe (12%), Other Backward Classes (27%), Persons with Disabilities (5.5%), Freedom Fighters (1%), Ex-servicemen (1%) and Goan Natives (2%).

As far as category of Freedom Fighters is concerned, we are informed that the State of Goa has framed the Goa Freedom Fighters Welfare Rules, 2013 providing the reservation which, is a class by itself. It was therefore imperative for the State to prescribe reservation by law, as reservation, which is a special privilege conferred, must be tested on the parameters of Article 14, i.e. clause for equality and cannot stand independent of it having tested against Article 14.

23. In any case when we perused Clause 5.7, which acts as an exception to the General Category, the State is desirous of offering some seats to the applicants, who had to suffer adverse situations in the wake of their parents being posted outside the State or deputed in the State for a short span and therefore it was not possible to complete the

requirement of passing the qualifying examination as well as the residential condition of 10 years preceding the last date/month of application.

It is very interesting to note that this benefit is conferred on the applicants whose either of the parents is an employee of Central Government/Central Government Public Sector Undertaking including Defence and Para-military force serving in Goa preceding the year of admission or is transferred to Goa till the date of submission of application for admission.

This contingency, according to us, is absolutely vague as it do not prescribe whether the ward was with him, when the parent was transferred or was serving in the State of Goa and whether it would contemplate that the ward was outside the State. For example, the Central Government employee is transferred in Goa in the year 2024 but since he was earlier serving in Mumbai, his ward continued to be in Mumbai and therefore did not comply with both the requirements for General Category candidate.

Category (b) in Clause 5.7 cover an employee of Goa State Government including those of State Government Public Sector Undertaking and educational institutions recognized by the State of Goa and who is a permanent employee.

The above clause amounts to creation of two classes amongst the employees of State Government, one class is where the employee along with his ward is resident of State of Goa and has throughout served in State of Goa and a class created by Clause (b).

The sub-classification of one class, i.e. employee of State Government, between that employee of State of Goa, who all the while was in the State of Goa and whose ward can compete as General Category candidate is differentiated from a State of Goa employee covered by clause (b) and in the former case, the ward will be competing from General Category and he will have to comply with the dual condition as contemplated in Clause 5.1, but benefit is given to ward of the employee of Goa State Government, who is not required to comply with the conditions in clause 5.1.

The classification between the two, is neither based on intellectual differentia nor it has nexus to the object sought to be achieved, being, to protect the children of those employees of State of Goa who on account of fortuitous circumstances could not comply with the dual condition but otherwise are entitled to be considered for admission to First Year MBBS Course on merit.

Category (c) of Clause 5.7, once again fail to have any logic as the parents residing in State of Goa and their ward who has studied HSSC examination from school/college in State of Goa is entitled to reservation without any justification and it would probably cover a

contingency that the parents are residing in the State of Goa and the child all the while was out of Goa but has passed HSSC Standard from school/colleges of Goa.

The above categories ought to have been provided, as a relaxation, in general clause itself. Clause (d) again creates an artificial class of those employees who have retired from service while they were posted in Goa but their wards continued to study in the State of Goa and passed qualifying exam from the State of Goa. While Article 14 prohibits class legislation, it allows reasonable classification, which though must be based on “intelligible differentia” and have a rational relationship with law's objective. This is a permissible exception to principle of absolute equality. It ensure fairness and enable laws that treat different groups distinctly but require justification preventing arbitrary discrimination while promoting justice and equality, two hallmarks of Indian Constitution.

Article 14 though forbid class legislation it do not prohibit reasonable classification of objects, persons and transactions for the purpose so as to achieve specific aims but such classification shall not be arbitrary, artificial or evasive and it must rest on substantial distinction which is real and it must bear a reasonable and just relation to the object sought to be achieved by the Legislation.

Classification based on reasonableness, as set out by the Apex Court in the case of **Saurabh Chaudari & Others v/s. Union of**

**India & Others<sup>11</sup>** must satisfy two ingredients: (i) classification must be founded on intelligible differentia distinguishing grouped together persons or group from left out ones and (ii) the differentia must have a rational relation with the object that is sought to be achieved.

It is essential that there must be presence of nexus between the object of segregating the two classes and the basis of the classification. When a reasonable basis do not exsit for a classification, then such classification shall be declared as discriminatory as it directly violate the principle of equality enshrined in Article 14.

24. In our considered opinion, the situations contemplated in clauses (a) to (d) of Clause 5.7 are in form of fortuitous circumstances and we quite appreciate the concern of the Government of State of Goa expressed towards the employees of the Central Government/Central Government Public Sector Undertakings including Defence and Para-military Force or even their own employees who, for fortuitous circumstances were deputed/transferred/posted outside State of Goa and their wards could not compete for a seat in a medical college in the State of Goa because of their inability, as the child had to suffer the vagaries on account of their parents. However, providing a specific reservation in form of 3% seats is totally unacceptable since we find that it is not so provided by law as contemplated under Article 15(5)

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11 (2003) 11 SCC 146

and introducing the reservation for this category which creates sub-classification which has no nexus with the object of offering medical education but on merit is definitely violative of Article 14 of the Constitution.

25. Mr Kantak has invited our attention to the Rules of NEET UG-2025 Information Brochure published by the Office of Commissioner State CET Cell, Maharashtra where relaxation is provided by marking out an exception for employees of Government of Maharashtra or its Undertakings and also for the children of employees of Government of India or its Undertakings despite the fact that they have not passed the SSC or HSSC or equivalent examination from the State as their parents were transferred to a place in Maharashtra and they could not comply with this stipulation and it offer relaxation in case of those employees of State of Maharashtra or its Undertaking who have joined their service since beginning at the place situated out of Maharashtra but transferred to a place situated within the State of Maharashtra and the children have passed SSC and/or HSSC or equivalent examination from institution situated outside the State of Maharashtra, subject to the condition that such an employee must have been transferred/deputed at a place of work located in State of Maharashtra and reported for duty before the last date of document verification.

Relaxation is also provided to children of such employees who have been transferred or deputed to a place outside the State of Maharashtra or who have returned to Maharashtra after initial transfer/deputation and their wards have passed the qualifying examination from outside the State of Maharashtra.

Similar concession is also provided in respect of the employees of Government of India or its Undertakings.

26. Being satisfied that the provision for reservation of 3% seats to the Central/State Government employees and persons in private occupations, which according to us, do not withstand the scrutiny of Article 14 of the Constitution, and since we find that the classification that is created on account of a contingency stipulated in clauses (a) to (d) of Clause 5.7, is not based on any intelligible differentia nor it has any nexus with the object of the selection process, i.e. to have admission on merit, we quash and set aside the said Clause. We must express that merit, and merit alone, must be allowed to explore the fullest extent, for every seat is to be filled in on merits, which receive relaxation by reservation contemplated by the Constitution or by a statute, i.e. an Act of Parliament or any law made by the State Legislature. We are also not convinced by the submission of the State that the Petitioner has no locus to call in question the said Rules, as we must only record that the ward of the Petitioner is one of the aspirants

for the seat in MBBS Course and whether she make up to that Course or not, is not criteria for judging his locus.

27. In the wake of the aforesaid, we allow the Writ Petition by quashing the reservation provided in Clause 5.7 of the Prospectus issued by Respondent No.2 providing 3% reservation in favour of the Central/State Government employees and persons in private occupations.

Rule is made absolute in above terms.

**NIVEDITA P. MEHTA, J.**

**BHARATI DANGRE, J.**