IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.07.2017

Delivered on : 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.16341/2017 & W.M.P.Nos.17665 & 17666/2017

W.P.Nos.16379 & 16380/2017 & W.M.P.Nos.17690 to 17695/2017

W.P.No.16449/2017 & W.M.P.Nos.17792 to 17794/2017

W.P.Nos.16503 to 16509/2017 & W.M.P.Nos.17848 to 17868/2017

W.P.No.16918/2017 & W.M.P.Nos.18377 to 18379/2017

W.P.No.16826/2017 & W.M.P.Nos.18271 to 18273/2017

W.P.No.16983/2017 & W.M.P.Nos.18440 to 18442/2017

W.P.Nos.17018 to17020/2017 & W.M.P.Nos.18469 to 18474/2017

W.P.Nos.17021/2017 & W.M.P.Nos.18475 & 18476/2017

W.P.No.17045/2017 & W.M.P.Nos.18503 to 18505/2017

W.P.Nos.17060 to 17067/2017 & W.M.P.Nos.18521 to 18544/2017

WP.No.16681 of 2017 & WMP.Nos.18057 to 18059 of 2017

WP.No.17103 of 2017 & WMP No.18580 of 2017

WP.No.17104 of 2017 & WMP Nos.18581 & 18582 of 2017

WP.Nos.17137,17139 to 17146 & WMP Nos.18605,18606&18609 to 18624 of 2017

WP.Nos.17147 to 17149, & 17151 to 17156 of 2017 & WMP Nos.18625 to 18630 & 18633 to 18644 of 2017

WP.No.17184 of 2017 & WMP Nos.18671 to 18673 of 2017

WP.No.17199 of 2017 & WMP Nos.18692 to 18694 of 2017

WP.No.17312 of 2017 & WMP.Nos.18813 to 18815 of 2017

WP Nos.17410 & 17411 of 2017 & WMP.Nos.18920 to 18923 of 2017

WP No.17525 of 2017 & WMP.Nos19015 & 19016 of 2017

WP.No.17528 of 2017 & WMP.Nos.19019 to 19023 of 2017

WP No.17533 of 2017 & WMP.Nos.19027 & 19028 of 2017

WP.No.17540 of 2017 & WMP Nos.19036 to 19038 of 2017

WP Nos.17545 & 17546 of 2017 & WMP Nos.19045 to 19048 of 2017

WP No.17565 of 2017 & WMP Nos.19061 & 19062 of 2017

W.P.No.16341 of 2017

V.S.Sai Sachin,

Minor represented by his father

and Natural Guardian,V.Suresh,

at No.B3, II Main Road, Kasturibai Nagar, Adyar,

Chennai – 600 020 . .. Petitioner

Vs.

1. The State of Tamilnadu,

Department of Health and Family

Welfare represented by its Secretary,

Fort St. George,

Chennai, Tamil Nadu.

2. The Selection Committee,

Directorate of Medical Education,

162, Periyar E.V.R.High Road, Kilpauk,

Chennai – 600 010.

3. The President,

Medical council of India,

Pocket 14, Phase-I, Sector-8,

New Delhi.

4. The Registrar,

The Tamil Nadu Dr.M.G.R..Medical University,

No.69, Anna Salai,

Chennai-600 032. ... Respondents

Prayer in W.P.No.16341 of 2017:

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Prospectus for MBBS/BDS admission 2017-18 on the file of first and second respondents pertaining to admission to MBBS/BDS Courses in Tamil Nadu Government Colleges, Government Seats in Self-financing Medical Colleges affiliated to the fourth respondent University and seats in Rajah Muthiah Medical College (Annamalai University) and quash that decision made in the alternate clause of clause-IV (19) of the Prospectus for MBBS/ BDS admission 2017-18 that out of the State Quota seas in Government Medical Colleges and Government Quota in self Financing Private Medical Colleges, 85 per cent of seats shall be earmarked to the students who have studied in the Tamil Nadu State Board only with rest 15 per cent will be reserved for students from CBSE and other boards so far as it relates to the petitioner and consequently direct the first and second respondents to consider the petitioner against all available seats in MBBS and BDS courses offered in Colleges and Education Institutions within the State of Tamil Nadu for the academic Year 2017-2018.

For Petitioner

in W.P.16341/2017 : Mr.Om Prakash, Senior Counsel

for Ms.S.Rajalakshmi

For Petitioner

in W.Ps.16379

and 16380/2017 : Mrs.Hema Muralikrishnan

For Petitioner

in W.P.16449/2017 : Mr.E.K.Kumaresan

for Mr.M.Guruprasad

For Petitioner

in W.Ps.16503

to 16509/2017 : Mrs.Hema Muralikrishnan

For Petitioner

in W.P.16918/2017 : Mr.Amalaraj

For Petitioner

in W.P.16826 &

16983/2017 : Mr.V.Srikanth

For Petitioner

in W.Ps.17018

to 17021

&17545 & 17546/2017: Mr.K.Sellathurai

For Petitioner

in W.P.17045/2017 : Mr.V.Karthikeyan

For Petitioner

in W.Ps.17060

to 17067/2017 : Mr.T.Gowthaman

For Petitioner

in W.P.16681/2017 : Mr.Rahul Balaji

For Petitioner

in W.Ps.17103

& 17104/2017 : Mr.Bharatha Chakravarthy for

M/s.Sai Bharath & Ilan

For Petitioner

in W.Ps.17137,

17139 to 17146,

17147 to 17149

& 17151 to

17156/2017 : Mr.K.Suresh

For Petitioner

in W.Ps.17184

and 17199/2017 : Mr.A.Muthukumar

For Petitioner

in W.P.17312/2017 : Mr.T.Karunakaran

For Petitioner

in W.Ps.17410

& 17411/2017 : Mr.Ashok Menan

For Petitioner

in W.Ps.17525

& 17565/2017 : Mr.Mani Sundar Gopal

for Mr.T.Meikandan

For Petitioner

in W.P.17528/2017 : Mrs.Nalini Chidambaram

for Mrs.C.Uma

For Petitioner

in W.P.17533/2017 : Mr.AR.L.Sunderasan,Senior Counsel

for Mrs.A.L.Ganthimathi

For Petitioner

in W.P.17540/2017 : Mr.P.S.Raman,Senior counsel

for Mr.R.Sivaraman

For Respondents : Mr.R.Muthukumaraswamy,

Advocate General,

assisted by Mr.T.N.Rajagopalan &

Mr.P.Kumar, Special Government Pleaders

for State

Mr.V.P.Raman,

Standing Counsel

for Medical Council of India

Mr.P.R.Gopinathan,

Standing Counsel for

Tamilnadu Dr.M.G.R.Medical

University

Mr.G.Nagarajan,

Standing Counsel for

Central Board of School Education.

COMMONORDER

W.P.No.16341 of 2017 is filed challenging Clause IV(19) of the Prospectus of MBBS/BDS admission 2017-18, reserving 85% of seats for the students of Tamil Nadu State Board, leaving the rest 15% to the students of CBSE and other Boards. All other writ petitions are filed challenging G.O.Ms.No.233 dated 22.06.2017 issued by the Health and Family Welfare (MCA-1) Department, Government of Tamil Nadu, making such reservation.

2. The petitioners are students who passed the Higher Secondary Examination through Central Board of Secondary Education. These students are aspiring to get admission to the M.B.B.S./B.D.S. Course in 2017-2018 Session. All these petitioners are stated to have been qualified in the National Eligibility cum Entrance Test (NEET).

3. Through the impugned G.O., the State of Tamil Nadu directed the Additional Director of Medical Education/Secretary, Selection Committee to allocate 85% of the seats to the students who have studied in Tamil Nadu State Board and 15% of the seats to the students who have studied in CBSE and other Boards for admission to MBBS/BDS courses for 2017-2018 session after surrendering 15% of the seats to All India Quota, in Government Medical Colleges and Government Quota seats in Self Financing Private Medical Colleges including the seats to be surrendered to Government by Rajah Muthiah Medical and Dental College, Annamalai University, Chidambaram.

4. Before going into the merits of the matter it is to be stated that one of the writ petitioners herein namely Mrs.Kaaviyaa Nakkiran (Minor represented by her father Mr.R.Nakkiran and others filed a Writ Petition(C)No.491 of 2017 before the Honourable Supreme Court of India challenging the very same Government Order. It is seen that the Honourable Supreme court, by order dated 07.07.2017 disposed of the said Writ Petition by passing the following order:

> *"Learned counsel for the parties are agreed, that the same controversy, as has been raised in the instant petition, is*

pending consideration before the Madras High Court wherein pleadings are complete.

2. In view of the above, we decline to interfere on the cause raised by the petitioners. We, however, grant liberty to the petitioners either to file a fresh petition before the Madras High Court, or alternatively to intervene in the petition pending before the Madras High Court.

3. With the above observation, the instant petition is disposed of.

4. Keeping in view of the urgency of the matter, we request the High Court to expedite the disposal of the matter pending before it.

Thus, from the above order passed by the Honourable Supreme court it is evident that there is no impediment for this Court to entertain and consider these writ petitions on merits. Learned Advocate General appearing for the respondents also conceded to such position.

5. The petitioners raised the following questions for consideration.

a) Whether the State of Tamil Nadu, by way of an executive order, can override the legislation occupying the field and orders passed by the Apex Court to that effect.

b) Whether the impugned G.O. violates Article 14 of the Constitution of India, thereby making discrimination between the students of State Board and Central Board, especially, when the qualifying examination to the admission to M.B.B.S./B.D.S.

Course viz., NEET is common to all.

6. Thus, the crux of the grievance of these petitioners is that the State Government cannot make the impugned reservation thereby allotting only 15% of the total seats to the C.B.S.E. and other Board students, even though they are qualified in the NEET and entitled to compete equally with others. In other words, it is the contention of the petitioners that when the qualifying examination for admission to the M.B.B.S./B.D.S. Course is only NEET and not the marks obtained in the respective Board Examinations, the State cannot make distinction between the students of State Board and Central Board, since both of them are equally placed insofar as the qualifying examination, namely NEET, is concerned. Therefore, it is contended by them that the impugned reservation denied their reasonable opportunity to compete for admission in respect of all the seats, even though they are otherwise qualified in their NEET. Such discrimination, according to the petitioners, is in violation of Article 14 of the Constitution of India. In other words, the crux of the contention of the petitioners is that there cannot be reservation, amounting to discrimination, among equals.

7. On behalf of the petitioners, the learned senior counsels Mrs.Nalini Chidamaram, Mr.P.S.Raman, Mr.AR.L.Sundaresan and Mr.Om Prakash and the learned counsels, Mrs.Hema Muralikrishnan, Mr.Gowthaman, Mr.Bharatha Charavarthy, Mr.K.Suresh Mr.Rahul Balaji, Mr.Kumaresan, Mr.Manisundar Gopal, argued before this Court by raising various points and relying on various Case Laws, which are discussed hereunder.

8. The contentions of all the learned counsels appearing for the petitioners are summarised as follows:

The basis of method of selection, by way of the impugned reservation, is based on uncertain proposition. What the State is not able to achieve, so far by way of legislation, cannot sought to be achieved through the executive order. In the place of legislation, the Government wants to exercise its executive power. When Section 10-D of the Indian Medical Council Act, 1956 has already occupied the field mandating a uniform entrance examination to All Medical Institution at undergraduate level and post graduate level, the executive order issued by the State Government cannot override the said Central legislation. There is no nexus between the impugned G.O. and the object sought to be achieved. On the other hand, the impugned G.O. indirectly seeks to defeat the object sought to be achieved through NEET. There is no rationale in issuing the impugned G.O. The State Government is trying to treat the equals as unequals by making this impugned reservation. The reservation within reservation is bad. Already the State has made reservation for socially weaker section like Schedule Caste and Schedule Tribe community students. However, by virtue of the impugned G.O., even those students belonging to Schedule Caste and Schedule Tribe undergone the Central Board Course are in fact prevented from competing with all seats. NEET is introduced for evaluating equal test. By issuing the impugned G.O., the State Government is trying to give preference to lesser meritorious students of State Board thereby, the merit is given a goby. Therefore, it defeats the purpose of NEET. After conducting the NEET examination and allowing the students to take part in those examination, the State Government cannot change

the game pole after the game is started. Preparation for NEET is totally different with separate syllabus. Both State and Central Board students are to take the same examination and therefore, they cannot be treated with discrimination later under the guise of present impugned reservation. When the MCI notification dated 21.12.2010 stipulates the qualifying examination as NEET and such notification was upheld by the Supreme Court, the State Government cannot make the selection by making this impugned reservation, thereby, diluting the object of NEET. Admittedly, the Bill passed by the Tamil Nadu Government to do away with NEET, insofar as this State is concerned, is still pending for getting the assent of the President of India and therefore, what the State Government is not able to achieve till this date by way of legislation, cannot be achieved by passing the impugned order. When the students of the Central Board are also the domicile of this State, they cannot be given step-motherly treatment by making the impugned reservation. When these students took their academic examination under CBSE and qualifying examination under NEET, they were given to understand that only the NEET examination will be taken as sole criteria for selection to MBBS/BDS course. Therefore, their legitimate expectation cannot be defeated now by the impugned G.O. The impugned G.O. was passed based on the proposal received from the Additional Director of Medical Education/ Secretary Selection Committee. Admittedly, the said proposal itself was made on 22.06.2017, on the same day on which the impugned G.O. also came to be passed. Therefore, it is evident that the impugned G.O. was passed without application of mind, more particularly, without conducting a cabinet meeting. The policy decision already taken by the Government by enacting the legislation, namely, Tamil Nadu Admission to MBBS /BDS Course, 2017, is still pending for getting assent from the President of India under Article 254(2) of the Constitution of India and therefore, the

State Government is not entitled to make the impugned G.O. by way of an executive order and implement such policy decision. On 04.11.2011 itself, the syllabus is given for NEET and therefore, the State Government cannot contend that the students of the State Board are not having sufficient time to equip themselves for NEET. The CBSE has got nothing to do with the preparation of syllabus for NEET, except to the extent of conducting such NEET examination alone. Therefore, it cannot be said that the students of CBSE are in more advantageous position. Only by way of State legislation an equal level playing field can be created and not by an executive order passed under Article 162 of the Constitution of India. The power conferred under Article 162 can only co-exist with law and not to be exercised independently unmindful of the law which is already occupying the field. The Executive Authority of the State Government is overriding the law made by the Parliament.

9. Mr.P.R.Raman learned counsel appearing for the Indian Medical Council supported the case of the petitioners and argued as follows:

The exemption granted during 2016-2017 academic year from taking NEET examination was in respect of the only students who were sought to be admitted under Government quota. Insofar as the Management quota for the said academic year is concerned, NEET examination was followed. The very same State Board students took NEET examination during 2016-2017 and competed with Central Board students for getting admission under management quota. The reasons given by the State Government to oppose the NEET, while introducing the present Bill, namely, Tamil Nadu Admission to MBBS/BDS Course Bill 2017 and to issue the

impugned order are one and the same. Such reasonings are not accepted by the Apex Court while upholding the NEET. The legislation now sought to be brought in is also pending for getting assent from the President of India and therefore, as on date, the State Government is not entitled to bring the impugned reservation by stating the very same reasons. All other States have accepted NEET and are following the same. The syllabus for NEET is prepared by MCI and already put up in the domain in 2011 itself. Therefore, enough time was available for the State Board students to prepare themselves. By the impugned G.O, two merit lists are sought to be prepared by the State Government which is impermissible.

10. The following are the case laws relied on in support of the above contentions:-

(i) AIR 1968 SC 1012 (Minor P.Rajendran V. State of Madras and others)

(ii) (1984) 4 SCC 296 (Suneel Jatley and others V. State of Haryana & Others) .

(iii) (2016) 7 SCC 487 (Sankalp Charitable Trust and Another V. Union of India and Others)

(iv) The decision of the Gujarat High Court at Ahmedabad made in Special Civil Application No.5749 of 2017 (Nilay Parag Joshi & 10 others V. State of Gujarat & 47 others)

(v) 1992 (2) Law Weekly 155 (Association of Private Schools Affiliated to the Central Board of Secondary Education rep. By its President V. Venkatachalam and Another V. State of Tamilnadu, rep. By Secretary to Government and others)

(vi) (1980) 2 SCC 768 (Dr.Jagadish Saran and Others V. Union of India)

(vii) (1984) 3 SCC 654 (Dr.Pradeep Jain and Others V. Union of India and others)

(viii) 2002 (4) CTC 449 (M.Aarthi (Minor) rep. By her mother and natural guardian Mrs.M.Renuka and 2 others V. The state of Tamilnadu rep. By Secretary to Government, Chennai – 9 and 11 others)

(ix) The decision of the Division Bench of this Court made in W.A.No.2624 of 2001 etc., (Manupatra Manu/TN/007/2002) (S.Muthu Senthil and Others Vs. State of Tamilnadu, Education Department, Chennai and others)

(x) (2016) 9 SCC 749 (State of Uttarpradesh and others V. Dinesh Singh Chauhan)

(xi) (1990) 1 I.L.R. Punjab and Haryana 282 (N.K.Batra and Others V. Kurukshetra University and others)

11. The respondents 1 & 2 filed their counter, wherein, it is stated as follows:-

The State is empowered to lay down policy to protect its students for admission under the State Government Seats for MBBS/BDS Course. The entrance examination for admission to Professional Educational Institutions created more hardship to the student community, especially in the rural area and the students who could not afford to enroll themselves in coaching classes. The issue of National Eligibility-cum-Entrance Test (NEET) arose initially after the Medical Council of India decided to introduce a Common Entrance Examination for all the Under Graduate and Post Graduate Medical Courses, by issuing notifications under its Regulations in the year

2010. From that time itself, the Government of Tamil Nadu is repeatedly emphasizing that the introduction of NEET is a direct infringement on the rights of the State. Though, the MCI notification for conducting NEET examination was quashed by the Hon'ble Supreme Court, in its order dated 18.07.2013, however, later, pursuant to the review petition filed by the Government of India, the Hon'ble Supreme Court in the order dated 11.04.2016 allowed the review petition and re-called the earlier order dated 18.07.2013 and decided to hear the case afresh. The Bench to take up the case afresh is yet to be constituted. However, in the Public Interest Litigation filed by one Sankalp Charitable Trust seeking for introduction of NEET from 2016-2017, the Hon'ble Supreme Court passed an order on 09.05.2016 to the effect that all admissions to MBBS/BDS Courses should be only through NEET. The admission for MBBS/BDS Course upto the year 2016-2017 has been made solely on the basis of marks obtained in Higher Secondary Examination in the Tamil Nadu State Board, CBSE and other Boards. Now, the Government of India have issued the Indian Medical Council (Amendment) Act, 2016 and Dentists (Amendment) Act, 2016 by inserting a new Section i.e. Section 10(D) mandating common entrance examination for Under Graduate and Post Graduate Courses with an exemption to States from National Eligibility cum Entrance Test (NEET) only for the academic year 2016-2017 for MBBS/BDS admissions in Government Medical Colleges and Government Quota seats in Private Medical Colleges. However, from the academic year 2017-2018, NEET has become mandatory for all Medical / Dental Courses both in Under Graduate / Post Graduate Courses. To protect the policy decision of Tamil Nadu for admission of students based on +2 examination marks in relevant subjects, Tamil Nadu Admission to MBBS and BDS Courses Bill, 2017 was introduced and unanimously passed in the Tamil Nadu Legislative Assembly on 01.02.2017. The Bill

is awaiting for the Assent of His Excellency The President of India. NEET places students from the State Board at a total disadvantage vis-a-vis CBSE students, as the syllabus, methodology and the content of the State Board and the examination pattern are quite different. The accessibility to the CBSE schools is not possible to all the students in the State. Comparing with the numbers, the CBSE and other Boards students are very meagre than the State Board Students. The syllabus for the NEET examination is in the pattern of CBSE. Now, as per the NEET, if no source reservation is done, out of the top 300 seats, only 76 will go to the students from State Board i.e. 28% while 72% will go to the students from CBSE / other Boards. Bright students from the State Board will thus, be denied of the opportunity to study in Madras Medical College, Stanley Medical College, Kilpauk Medical College etc., Article 14 forbids class legislation, but does not forbids classification which rests upon reasonable grounds of distinction. The students studied in the State Board and the students studied in the CBSE Board are not equals. Hence, unequals cannot be treated as equals as per the Article 14 of the Constitution of India. The Government of Tamil Nadu is still expecting that the Government of India will get the Assent of His Excellency The President of India on the Bill of the Government of Tamil Nadu. Until then, the Government of Tamil Nadu has to obey the rules in force. At the same time, the Government of Tamil Nadu is having the power to allocate the seats between the students studied in State Board syllabus and the students studied in CBSE and other Boards syllabus.

12. The respondents 1 and 2 also filed additional counter affidavit dated 13.07.2017 after the matter was reserved 'for orders'. In the said additional counter, apart from

reiterating the contentions already raised in the original counter affidavit, it is stated further as follows:

There were 2279 students from the State Board and 39 students from the CBSE and other Boards admitted in the MBBS Course for the year 2016-17 in the Government Medical Colleges. As per the NEET, no source reservation is done, out of the top 300 seats only 76 will go to students from State Board i.e., 28% while 72% will go to students from CBSE/other Boards. Hence, unequals cannot be treated as equals as per Article 14 of the Constitution. It is further stated that in order to maintain equality before law, the impugned G.O. came to be passed. The Government is well aware of the interest of the students of the State Board and other Boards and plan to issue common merit list combining of students studied in various boards with a parameter of NEET mark only. Allotment only will be made compartment wise i.e., 85% of seats will be allotted to students studied in State board and 15 % of seats to students studied in CBSE and other Boards. The rule of reservation of 69% for BC/MBC/BC(M)/SC/ ST/SCA etc., will be followed for both the candidates for State Board students and CBSE and other Board students. Hence, there is no deviation in the rule of reservation enacted while allotting the seats to the candidates.

13. Mr.R.Muthukumarasamy, learned Advocate General appearing for the State submitted as follows:

The State of Tamil Nadu is against conducting the entrance examination from the very beginning. Already a Bill viz., "Tamil Nadu Admission to MBBS and BDS Courses Bill, 2017" (T.N.L.A. Bill No.7 of 2017) was passed unanimously in the Tamil Nadu

Legislative Assembly on 01.02.2017 and the Bill is awaiting for the Assent of His Excellency The President of India. Upto 2016-2017, only academic marks in the Higher Secondary School were treated as qualification to the admission into the MBBS/BDS Courses. In the year 2016-2017 NEET examination is excluded in respect of students sought to be admitted under the State Quota. If the Bill has not assented by the President of India, the State has to certainly follow Section 10(D) of the Indian Medical Council Act. Even now NEET will be the sole criteria for admission into the MBBS/BDS Courses and what the impugned Government Order proposes is only making reservation among the students on a pro-rate basis, based on the statistics of the total strength of students who have taken part in the State Board and Central Board Examination. The impugned Government Order was not passed based on the Additional Director's proposal alone. On the other hand, the Government wanted to examine the issue and get the report on that aspect and accordingly, passed the impugned Government Order. NEET syllabus is based on CBSE standard. Therefore, the State is creating only different sources since there is in-equality among the students of State and Central Board. The competency for issuing the impugned Government Order is traceable under Article 162 of the Constitution of India and therefore, based on such power the State is trying to make classification among the students within its State. It is only creating level playing field among the students. Therefore, it cannot be treated as discrimination and consequently, there is no violation of Article 14 of the Constitution of India. Reasonable classification is always permissible. Here, wholesome reservation is not made and therefore, the petitioners are not justified in contending otherwise. In order to produce real equality, the State has passed the impugned Government Order which cannot be faulted. As per the reservation made through the impugned Government Order, out of total 4350

seats, the State Board students will get 2867 seats and other Board Students will get 520 seats. Therefore, the petitioners cannot have any grievance. The case laws relied on by the learned counsel appearing for the petitioners are factually distinguishable. On the other hand, the observation made by the Apex Court in the Model Dental College case reported in *2016 Volume 7 SCC 353* is favouring the Government.

14. On the side of the respondents, following case laws are cited:-

(i) (2016) 7 SCC 353 (Modern Dental College and Research Centre and Others V. State of Madhya Pradesh and Others)

(ii) 1970 AIR 35 (Chitra Ghosh and Another V. Union of India and others)

(iii) (1980) 2 SCC 768 (Dr.Jagadish Saran and Others V. Union of India)

15. Heard the learned counsels appearing on either side. I have given my careful consideration to their submissions as well as the respective pleadings and the respective case laws relied on by them.

16. The issue involved in these cases is as to whether the impugned Government Order in G.O.Ms.No.233 dated 22.06.2017 issued by the Health and Family Welfare (MCA-1) Department, Government of Tamil Nadu, and the relevant impugned clause

in the prospectus are sustainable in the eye of law. I have already pointed out that the impugned Government Order makes reservation of 85% of the seats in MBBS/BDS Courses to the State Board students thereby leaving 15% of the seats for the students from other Boards such as CBSE etc., The reasons and the justifications stated in the impugned order for making such reservation are mainly focussed on the policy decision of the Government to protect the State Board students whose syllabus, methodology and pattern of examination are stated to be entirely different from the Central Board of Secondary Education. Further justification stated in the impugned order is that the Government wants to ensure an equal opportunity to the students of various Boards and normalize the same.

17. It is further stated in the impugned Government Order that it was passed, since NEET is basis for admission, to ensure that fair and equal opportunity are given to the candidates of different Boards out of all the States, equal seats in Government Medical Colleges and Government Quota seats in Self Financial Private Medical and Dental Colleges. The Additional Director of Medical Education/Secretary, Selection Committee proposed that 85% of the seats may be earmarked to the students who are studying in the Tamil Nadu State Board with the rest available to the other Boards on a pro rate basis. It is also stated that more than 95% of the students appeared in the State Board and not more than 5% appeared in the remaining Boards. After extracting the above proposal made by the Additional Director of Medical Education/Secretary, Selection Committee dated 22.06.2017, the Government of Tamil Nadu took the decision to accept such proposal and issued the impugned Government Order wherein, the consideration and examination of the said proposal

are discussed only at the penultimate paragraph 8 which reads as follows:

> "The Government have examined the proposal of the Additional Director of Medical Education / Secretary Selection Committee at paragraph 7 above and decided to accept the same. Accordingly, the Government have taken a policy decision and direct the Additional Director of Medical Education/Secretary Selection Committee to allocate the 85% of the seats to students who have studied in Tamil Nadu State Board and 15% of the seats to the students who have studied in CBSE and other Boards for admission to the MBBS/BDS course for 2017-2018 session after surrendering 15% of the seats to All India Quota, in Government Medical Colleges and Government Quota seats in Self Financing Private Medical Colleges including the seats to be surrendered to Government by Rajah Muthiah Medical and Dental College, Annamalai University, Chidambaram."

18. It is not out of context to note here at this juncture, that the said proposal as well as the consequential impugned Government Order were made on one and the same day i.e. on 22.06.2017. A careful perusal of the findings given by the Government therein at paragraph 8, as extracted supra, would undoubtedly indicate that there is no application of mind on the proposal made by the Additional Director of Medical Education except stating that the Government have examined the proposal and decided to accept the same. Curiously, it is also stated at paragraph 8 that the Government have taken a policy decision and directed the Additional Director of Medical Education to allocate the seats to the students as per the impugned

reservation.

19. Therefore, it is evident that a policy decision, as projected in the impugned Government Order, seems to have been taken based on the proposal of the Additional Director only, without there being any discussion by the Cabinet to that effect. Certainly, the Additional Director is not competent to take a policy decision and on the other hand, it is the Government, which is competent to do so. In these cases, the Additional Director by making the proposal has requested the Government to consider a policy to facilitate the students from all parts of the State to get an opportunity to study medicine and Dental Courses. At this juncture, it is relevant to note that the State Government has already taken a policy decision to do away with or to get rid of NEET by passing a Bill viz., Tamil Nadu Admission to MBBS/BDS Course Bill 2017, unanimously. It is not in dispute that the said Bill has not transformed itself into a Legislation, since the Constitutional requirement of getting assent from the President of India, as required under Article 254(2) of the Constitution of India, is yet to be complied with. Therefore, when the very same policy taken by the Government by way of passing the above said Bill is still pending consideration before the President of India, the question that would arise now is as to whether the Government is entitled to issue this impugned reservation as a matter of policy decision stating the very same reasoning.

20. I have already pointed out that to take a policy decision there must be a thorough discussion of the issue by the Cabinet and it cannot be taken simply based on a

report submitted by the Additional Director of Medical Education. Even otherwise, assuming that the Government is entitled to take the present policy decision, still this Court is not excluded or precluded from considering the validity of the impugned Government Order resulting out of such policy decision, if the net result of such Government Order is violating certain Constitutional provisions, more particularly, Article 14 of the Constitution of India, or if it works against the legislation already occupying the field.

21. Before proceeding further, let me narrate the brief facts and circumstances which led the Government to take the impugned decision.

22. For admission to MBBS/BDS Course in the State of Tamil Nadu, previously the marks obtained in the respective Board Examination in +2 are taken as the sole criteria. The Medical Council of India amended its Regulations 2010 and issued Notification dated 21.12.2010, whereby it is mandated that eligible for admission to M.B.B.S. Course in a particular academic year is to be assessed based on the marks obtained in the National Eligibility cum Entrance Test to M.B.B.S. Course and that selection for admission to M.B.B.S. Course shall be prepared on the basis of the marks obtained in such National Eligibility cum Entrance Test only. The said Regulation was challenged before the Honourable Supreme Court of India. Though by an order dated 18.07.2013, the said Regulation was quashed by the Apex Court, pursuant to filing of a review petition, the said order dated 18.07.2013 was recalled and the matter was directed to be heard afresh. Thereafter, in order to bring

uniformity among all the students, the Government of India issued Indian Medical Council (Amendment) Act, 2016 and Dentists (Amendment) Act, 2016, mandating common entrance examination for Under Graduate and Post Graduate Courses, however, by giving exemption to States from such entrance test only for the academic year 2016-2017 in respect of admission in Government Medical Colleges and Government Quota seats in Self Financing Private Medical Colleges. Accordingly, from the academic year 2017-2018 NEET has become mandatory for all Medical / Dental courses both in Under Graduate and Post Graduate level in Government Medical Colleges and Government Quota seats in Self Financing Private Medical Colleges. Therefore, the admitted position as on today is that NEET is the only qualifying examination for admission into the Medical / Dental Courses. In other words, the marks obtained in the relevant Board examination of Higher Secondary Course do not make any impact or difference, except to the extent that in order to qualify to write the NEET, the students should have obtained 50% of the marks in such Board examination.

23. No doubt, the State Government from the beginning has opposed to the common entrance test viz., NEET. But the fact remains that they failed to succeed before the Apex Court, when the said issue was considered and decided in **Sankalp Charitable Trust case.** Therefore, now the State Government has passed a recent Bill viz., Tamil Nadu Admission to MBBS and BDS Courses Bill, 2017 to get rid of the NEET. However, as stated supra, the said Bill has not transformed itself into a Legislation for want of Presidential Assent. Therefore, the State Government is left with no other option except to accept and make the selection only in accordance with the merits of

the marks obtained in NEET examination and not otherwise.

24. Under such circumstances, the impugned Government Order is to be tested on the touch stone of reasonableness, fairness, apart from considering the same as to whether it is arbitrary, discriminatory and violating Article 14 of the Constitution of India. It is also to be seen as to whether the present impugned Government Order indirectly dilutes or makes the object of NEET, namely selecting the meritorious candidates, gets deviated.

25. The strong contention raised by the State Government in support of the impugned G.O. is that the students from the State Board have taken different syllabus, methodology and pattern of examination compared with the students of Central Board of Education. It is also stated that State Board students mostly are from rural background. I do not understand as to how the State Government is justified in making such comparison, especially, when the qualification for admission into MBBS/BDS course is not based on the marks obtained by those students in different Boards and on the other hand, it is based on the marks obtained in the common entrance test, namely NEET, conducted for all the students. Therefore, the students, after passing their respective Board examinations and obtaining 50% and more marks therein, are assembled together as one Unit to take part in the common entrance test, namely NEET, in order to qualify themselves to get admission into MBBS/BDS courses. When the qualifying examination is the common entrance test, namely NEET, irrespective of the fact whether the student is from State Board or Central Board, the Government thereafter is not entitled to make two different classifications by way of the impugned reservation among the students who have taken part in the NEET examination. In my considered view, once they take NEET

examination, all such students are to be treated equal and therefore, the Government is not justified in projecting their case as though they are doing level playing field among the unequals. Thus the impugned action violates Article 14 of the Constitution of India.

26. The reservation based on social status is one thing and the reservation based on institution wise is another thing. What is sought to be done by the impugned G.O. is nothing but an institutional reservation. One can understand the logic behind such reservation if the qualifying marks for admission into MBBS/BDS course are the one obtained in the respective Board examination. But it is not so in the present case, as the qualifying examination viz., NEET is common for all Board students. Therefore, the State is not justified in treating the other Board students, namely CBSE etc. differently and curtailing their right to compete with the other State Board students in respect of all the seats earmarked under State quota.

27. At this juncture, I would like to point out a paining and disturbing feature. The case as projected by the Government by treating the students from the CBSE Board undoubtedly indicate the mind of the State Government that they want to look at those students as though they do not belong to this State. Needless to say that those students from CBSE and other Boards, apart from the State Board students, are also the children of this State and they hail from this State only. After all, the option was given to them either to take State Board or Central Board stream for qualifying themselves in the Higher Secondary Course. When the choice is left to those students and their parents to choose any one of such stream, there was no

indication that the students who select CBSE stream will get meagre percentage of reservation for getting admission into the professional courses. Under such circumstances, if the Government imposes the present restriction that took after taking NEET, certainly, it would cause undue and irreparable hardship to those students apart from treating them as a different clause of persons.

28. Needless to state that Medical Education is an important field which is expected to produce highly talented & meritorious professionals, since they are going to deal with the life of the people. At times they are looked at par with God. Therefore, the selection of students to such courses must be based on strict merit only and not otherwise. There cannot be any compromise on merits of selecting the students to such courses. An argument is advanced on the side of the State Government as though the meritorious students who obtained higher marks in the Higher Secondary Examination in the State Board will be denied an opportunity to take admission in some important colleges if all those seats are occupied by other board students. I am afraid that the said reasoning sounds not better, when admittedly the State is not entitled to look into the marks obtained in the Board Examination and on the other hand, it is duty bound to consider only the marks obtained in the NEET examination. Merely because the CBSE students obtained more marks in the NEET than the students of State Board, can they be treated with jealous and denied their legitimate right to get admission into the professional courses by imposing the present impugned reservation, even though they are meritorious in the NEET? Certainly, it is impermissible, that too, for the State to adopt such step-motherly treatment to those students from CBSE Board. Are they aliens? Is it their sin in selecting the CBSE Board

to qualify themselves in +2?

29. It is not out of context to mention at this juncture that for an example, in a same family, one of the children might have opted to go to State Board and another to Central Board. It depends upon the choice of the student and his/her wish. Still they are from the same family and their qualifying examination is also one and the same, namely Higher Secondary. When both of them are called upon to write a common entrance test viz., NEET to qualify themselves for admission to the MBBS/BDS course, the State cannot make a distinction thereafter between these students, merely because the syllabus, methodology and pattern of examination are entirely different between these two.

30. It is well known fact that the syllabus and pattern of examination in CBSE are more tougher than the State Board. It is also a known fact that scoring higher marks in the CBSE examinations is a difficult task when compared to the State Board Examination, where obtaining cent percent marks in most of the subjects, that too, by large number of students, is common. Therefore, a student who has undergone CBSE course with such difficult syllabus and examination, has to be treated equal with the students of State Board examination. At any event, they are not to be treated with discrimination. If such student became successful in the CBSE Board examination with good marks and has also obtained requisite marks in the NEET examination, he/she cannot be singled out merely by stating that he/she will be fit in only under 15% seats allotted and not entitled to compete for the rest of the seats. Such meritorious student, if not patted at his/her back as a gentle gesture of

appreciation, atleast, should not be hit with the knuckles on their head by way of this disadvantageous and discriminatory reservation.

31. Another reason stated in support of the G.O. is that the State Board students are unable to equip themselves to take part in the NEET examination. It is stated that there is no sufficient time for them to prepare for such examination based on the syllabus prepared separately. I do not think that the inability of the State Board students to equip themselves can be a justifiable reason to over look the meritorious students of other boards to get admission into the professional courses. It is not in dispute that the syllabus of NEET was prepared much earlier and made public as early as in the year 2010-11. It is seen that the syllabus is prepared by Medical Council of India and not by CBSE. Therefore, it is for the State Government to take all steps to equip the students of State Board to compete with the other students from the other Boards, by providing all facilities and conducting Coaching classes etc., all over the State. Without doing so meticulously, now the Government cannot take shelter under the guise of policy decision and issue the impugned G.O., thereby, undoubtedly, diluting the merits for admission.

32. May be the State Board and CBSE Board are two different sources for taking the Higher Secondary Examination. But when the qualifying examination for admission to MBBS/BDS Course is only a common test, namely NEET, conducted for both sources of students, the State Government, cannot once again create two sources, that too after conducting NEET examination, for admitting the students in the above courses, which act in fact, is nothing but indirectly diluting the very object of

conducting the NEET. At this juncture, it is relevant to quote the relevant clauses in the Notification dated 21.12.2010 issued by the Medical Council of India which holds the field even as on today. It reads as follows:-

> *"6. In Chapter II, clause 5, Sub-clause-5, under the heading "Procedure for selection to MBBS Course shall be as follows" shall be substituted as under:*
>
> *"1. There shall be a single eligibility cum entrance examination namely "National Eligibility-cum-Entrance Test for admission to MBBS course in each academic year. The overall superintendence direction and control of National Eligibility-cum -Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct National eligibility-cum-Entrance test for admission to MBBS course.*
>
> *ii. In order to be eligibility for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (fifty percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year. However, in respect of candidates belonging to Schedule Castes, Schedule Tribes and other Backward Classes, the minimum percentage marks shall be 40% (forty percent) in each paper and in respect of candidates with locomotors disability of lower limbs, the minimum percentage marks shall be 45% (forty five percent) in each paper of National Eligibility cum Entrance Test:*
>
> *provided when sufficient number of candidates belonging to respective categories fail to secure minimum marks as prescribed in National eligibility cum Entrance Test in any*

academic year for admission to MBBS course, the Central Government in consultation with Medical Council of India may, at its discretion, lower the minimum marks required for admission to MBBS course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

iii. The reservation of seats in medical colleges for respective categories shall be as per applicable laws prevailing in States/Union territories. An all India merit list as well as state wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility cum Entrance Test and candidates shall be admitted to MBBS course from the said lists only.

iv. No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub clause (ii) above shall be admitted to MBBS course in the said academic year.

v. All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility cum Entrance Test."

33. The Government of India through its Ministry of Law and Justice has also brought an amendment to the Indian Medical Council (Amendment) Act, 2016, wherein, after Section 10C of the Indian Medical Council Act, 1956, Section 10D was introduced which reads as follows:

"10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as

may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."

34. From the perusal of the above said Regulation and provision of law, it is evident that there cannot be any other criteria for selection to the M.B.B.S//B.D.S. Course other than the marks obtained in the NEET. In the said Notification dated 21.12.2010, the Medical Council of India has categorically and specifically stated that the state wise merit list of eligibility candidates shall be prepared on the basis of the marks obtained in National Eligibility cum Entrance test and that the candidates shall be admitted to the M.B.B.S. Course from the said list only. Therefore, the State Government cannot dilute such merit list of the eligible candidates by introducing the impugned seat reservation. Hence the impugned action is to be seen as an arbitrary exercise of power unmindful of the legislation already occupying the field.

35. Argument is advanced on the side of the writ petitioners also on the question of competency of the State of Tamil Nadu in issuing the impugned Government Order. It is contended that the present Government Order is repugnant to Central Law viz., Indian Medical Council Act, 1956 and therefore, without getting the assent of the

President of India under Article 254(2) of the Constitution of India, the State Government cannot implement the impugned Government Order. I do not think that the petitioners are justified in questioning the competency in issuing the impugned Government Order by exercising the power conferred under Article 162 of the Constitution of India. The impugned Government Order is not directly doing away with the NEET or preventing its application or enforcement. On the other hand, in the impugned order, the Government admits that NEET alone is the criteria for admission to MBBS/BDS course. However, what they want to achieve by issuing the impugned Order is to make large numbers of seats available to the State Boards students viz., 85%, leaving the rest to other Board students. No doubt, by doing so, the State Government indirectly wants to dilute the object of NEET. But, at the same time, while considering the question of competency, I do not think that the petitioners are justified on such issue, since the issue directly involved herein is the reservation after NEET and not the validity of NEET itself. At the same time, it is to be noted that all the orders issued with competency, need not necessarily be a justifiable one. It depends upon the factual aspects of the matter for which such order is issued. If this Court finds that there is no justification in issuing such order, the competency enjoyed by the Government alone cannot make the order legal or sustainable. Judicial scrutiny is always available to test the correctness or otherwise of such order. I have already pointed out in detail by going into the merits of the order and found as to how the same is bad and cannot be sustained on the ground of violation of Article 14 of the Constitution of India, arbitrary exercise of power and that it is against the very object of NEET.

36. The learned counsels for the petitioners relied on the following case laws:-

(i) In the decision *of the Honourable Supreme Court* reported in **AIR 1968 SC 1012 (Minor P.Rajendran V. State of Madras and others)** wherein, among other things, it is observed as follows:

> *"...In the alternative, it is urged that districtwise distribution violates Art. 14 of the Constitution because it denies equality before the law or equal protection of the laws, inasmuch as such allocation of seats may result in candidates of inferior calibre being selected in one district while candidates of superior calibre cannot be selected in another district. It has not been denied on behalf of the State that such a thing cannot happen, though there are no statistics available in this behalf because the mark-sheets were all destroyed after the interviews. The question whether districtwise allocation is violative of Art. 14 will depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a larger number of candidates than seats available, selection has got to be made. The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of Selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors. If that is the object, the argument on behalf of the petitioners/appellant is that that object cannot possibly be served by allocating seats districtwise. It is true that Art. 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a*

reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges, the allocation of seats districtwise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources.

Let us now look to the justification which has been put forward on behalf of the State of Madras in support of this districtwise allocation. It is said that there are better educational facilities in Madras city as compared to other districts of the State and Therefore if districtwise selection is not made, candidates from Madras city would have an advantage and would secure many more seats than justified on the basis of proportion of the population of Madras city compared to the population of the State as a whole. This in our opinion is no justification for districtwise allocation,which results in discrimination, even assuming that candidates from Madras city will get a larger number of seats in proportion to the population of the State. That would happen because a candidate from Madras city is better. If the object is to attract the best talent, from the two sources, districtwise allocation in the circumstances would destroy that object.

(emphasis supplied)

(ii) In the decision of the Honourable Supreme Court reported in **(1984) 4 SCC 296 (Suneel Jatley and others V. State of Haryana & Others)** interalia at Paragraph No.5 and at Paragraph Nos. 6 and 7, it is observed as follows:

"5..... The respondents contended that the reservation of 25 seats for candidates coming from rural areas is valid and can be sustained under Art. 14 of the Constitution. Therefore, the question is: whether the classification between the students educated in urban school and common rural schools is based on any intelligible differentia which has a rational nexus to the objects sought to be achieved ?

6. It is well-settled that Art. 14 forbids class legislation but permits reasonable classification in the matter of legislation. In order to sustain the classification permissible under Art. 14, it has to satisfy the twin tests: (1) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) the differentia must have a rational relation to the object sought to be achieved by the impugned provision.

7. Does the classification on the basis of candidates coming from rural areas against urban area in the matter of admission to medical college satisfy the twin tests. If the attempt at amplification of the classification resorted to by the respondents is ignored for the time being, the broad classification is that the students coming from rural areas are classified separately for the purpose of admission to the medical college. The reservation is described in the prospectus as: 'Rural areas-25 seats'. If the matter were to rest here, it would have been unnecessary to write this judgment in view of the decision of this Court in State of U.P. v. Pradeep Tandon(1) In that case the State of U.P. had made reservation for admission to medical college in favour of the candidates from rural, hill and Uttarkhand areas on the ground that the people coming from these areas belonged to socially and educationally backward classes. The reservation was challenged as being violative of Arts. 14 and 15 and not protected by Art. 15(4). The State sought to sustain the classification under Art. 15(4) urging that the object of the classification was the advancement of facility for medical education for candidates coming from reserved areas as the people coming from these areas belonged to socially and educationally backward classes. This

contention was accepted in part and negatived in part. Striking down reservation of candidates coming from rural areas, the Court held that reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens and the reservation appears to be made for the majority population of the State and on the ground of place of birth. The Court upheld reservation in favour of candidates from Hill and Uttarkhand areas on the ground that reservation was in favour of the people in those areas who belonged to socially and educationally backward classes of citizens. Distinguishing the case of reservation in favour of candidates coming from rural areas, the Court observed that the backwardness contemplated by Art. 15(4) is both social and educational backwardness of the citizens, the accent being on classes of citizens socially and educationally backward and therefore, socially and educationally backward citizens cannot be equated with areas as a whole socially and educationally backward. The Court concluded that some people in the rural areas may be educationally backward, some may be socially backward and there may be few who are both socially and educationally backward but it cannot be said that all citizens residing in rural areas are socially and educationally backward. Accordingly, the reservation in favour of candidates coming from rural areas was held as constitutionally invalid. This reasoning would apply mutatis mutandis to the facts in the present case because the reservation is in favour of candidates coming from rural areas."

(emphasis supplied)

(iii) In the decision of the Honourable Supreme Court reported in **(2016) 7 SCC 487 (Sankalp Charitable Trust and Another V. Union of India and Others)** at Paragraph Nos.11 and 12, it is observed as follows:

"11. It may be mentioned here that some learned counsel representing those who are not parties to this petition have made submissions that in view of the Judgment passed in Christian Medical College, Vellore V. Union of India (2014) 2 SCC 305: 6 SCEC 407, it would not be proper to hold NEET and this order should not affect pending matters.

12. We do not agree with the first submission for the reason that the said judgment has already been recalled on 11.04.2016 (Medical Council of India V. Christian Medical College, Vellore, (2016) 4 SCC 342) and therefore, the Notifications dated 21.12.2010 are in operation as on today."

(iv) In the decision of the Gujarat High Court at Ahmedabad in Special Civil Application No.5749 of 2017 (Nilay Parag Joshi & 10 others V. State of Gujarat & 47 others) at Paragraph Nos.1, 2.2, 26 to 29 and 33, it is observed as follows:

"1. The issue involved in this petition is whether the State Government is justified in taking decision to grant admission on pro-rata distribution of seats on the basis of school boards in M.B.B.S., B.D.S., Courses in Medical Colleges and Institutions situated in State of Gujarat after introduction of NEET.

2.2. The State of Gujarat has followed a policy of distributing seats between different Boards on the basis of the strength of number of schools of the respective Boards by offering seats to the students passing Standard XII on prorata basis, taking into consideration number of students passing from the Gujarat Board, CBSE, ISCE or IB.

26. Keeping in mind aforesaid decisions rendered by the Hon'ble Supreme Court as well as this Court, if the facts of the present case are examined, it can be said that it is open for the State to prescribe the

sources from which the candidates are declared eligible for applying for admission to the Medical Colleges, once a common entrance test has been prescribed for all the candidates on the basis of which selection is to be made, the decision for granting admission on pro-rata basis for State Board and other Board students is arbitrary. At this stage, it is required to be noted that admission into any professional institution,merit must play an important role. While seeking admission to a professional, it is necessary that meritorious candidates ae not unfairly treated or put at a disadvantage by preferences shown to less meritorious. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission.

27. We are of the view that once there is common merit list prepared for the purpose of grant of admission on the basis of result of NEET, the only permissible reservation is in favour of students who have studied in schools situated within the State of Gujarat and therefore, it is impermissible for distribution of seats on the basis of the school board and therefore, such segregation / distribution of seats on the basis of school board would amount to discriminating students solely on the basis of their school board. Such policy of the State would deprive the petitioners from being considered for admission to all available seats in various graduate courses offered by the colleges and educational institutions only on the ground that the petitioners did not pass Standard XII from a school affiliated to the State Board.

28. It is well settled that Article 14 of the Constitution of India does not forbid classification, but the classification has to be justified on the basis of the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object sought to be achieved. Therefore, where the object to be achieved is to get the best talent for admission to professional colleges, the allocation of seats on pro-rata basis as per the policy of the respondent – State has no reasonable relation with the object to be achieved.

29. The contention of the learned advocate appearing for the private respondent that CBSE schools are in urban areas whereas, Gujarat board students come from rural background and because of substantial difference in the syllabus of the Gujarat Board and other boards, the policy impugned in the petition is required to be continued for this year. Such submission is not required to be accepted as the Hon'ble Supreme Court in the case of Suneel Jatley V. State of Haryana (supra) has held that reservation of seats for rural candidates for admission to MBBS / BDS courses is invalid. Thus, aforesaid contention is also not required to be accepted.

33. In view of aforesaid discussion, we are of the view that respondent State is not justified in taking decision to continue its policy to grant admission on pro-rata distribution of seats on the basis of school boards in MBBS and BDS courses in medical institutions after introduction of NEET. Thus, we hereby declare that for admission to MBBS and BDS courses in colleges within the State of Gujarat, there can be no distribution of seats between candidates of Gujarat Board and other Boards either under the Government Resolutions, rules governing admission to professional medical course after introduction of NEET and therefore, all the students qualifying in the XII Board Examination from schools within the State of Gujarat are entitled to be considered against all available seats in MBBS and BDS courses offered in colleges and Education Institutions within the State of Gujarat. The petition is allowed. Rule is made absolute."

(emphasis supplied)

(v) In the decision of the Division Bench of this Court reported in **1992 (2) Law Weekly 155 (Association of Private Schools Affiliated to the Central Board of Secondary Education rep. By its President V. Venkatachalam and Another V. State of Tamilnadu, rep. By Secretary to Government and others)** at Paragraph No.53, it is

observed as follows:

> *"53. If there is an entrance examination and merit is reckoned in accordance with the result of that examination but admissions are restricted by allotment of seats to various sources, the equality rule of the Constitution is violated. Having reckoned their merit as a result of the entrance examination if they are sought to be classified on the basis of the sources through which they come, there is every reason that there can be no nexus with the object of selecting the best of the candidates for professional courses. The Supreme Court has made it clear more than once that any such reservation will be hit by Art. 14 of the Constitution."*
>
> *(emphasis supplied)*

(vi) In the decision of the Hon'ble Supreme Court reported in **(1980) 2 SCC 768 (Dr.Jagadish Saran and Others V. Union of India)** at Paragraph Nos.18, 33 and 34 interalia, it is observed as follows:

> *"18. Prima facie, equal marks must have equal chance for medical admissions, as urged by the petitioner. And neither university-based favoured treatment nor satyagraha-induced quota policy can survive the egalitarian attack. To repulse the charge, equality-oriented grounds must be made out. Constitutional equality itself is dynamic , flexible, and moulded by the variables of life. For instance, if a region is educationally backward or woefully deficient in medical services, there occurs serious educational and health-service minded welfare state....."*
>
> *33. Even so what is fundamental is equality, not classification. What is basic is equal opportunity for each according to his ability, no; artificial compartmentalisation and institutional apartheidisation, using the mask of handicaps. We cannot contemplate as consistent with Article 14 a*

clannish exclusivism based upon a particular university, without more. Alive to these major premises let us examine the merits of the charge 'admission' discrimination in the present case....."

34. Thus the constitutional principles and limitations are clear and the norms are belighted by the precedents but their application to the specific situation is an exacting task. The burden, when protective discrimination promotional of equalisation is pleaded, is on the party who seeks to justify the exfacie deviation from equality....."

(vii) In the decision of Division Bench of this Court reported in **2002 (4) CTC 449 (M.Aarthi (Minor) rep. By her mother and natural guardian Mrs.M.Renuka and 2 others V. The state of Tamilnadu rep. By Secretary to Governemnt, Chennai – 9 and 11 others)** interalia at Paragraph No19 and at Paragraph No.44, it is observed as follows:

"19.The executive power of the State under Article 162 of the Constitution is co-extensive with the legislative power and when the field of law is occupied by a legislative Act, the exercise of executive power is not available. There is no dispute about the State's power to provide reservation even by executive order under Article 162 of Indian Constitution. But such power can be exercised only in the absence of a legislative Act. Of course, if an aspect is not covered by the legislative Act, then the executive power can be resorted. To put it precisely, if the power of reservation is exhausted under Tamil Nadu Act 45 of 1994, then no power exists to invoke the executive power under Article 162 of the Constitution....."

" 44. The Supreme Court, in the case of Anil Kumar Gupta, 1995 (5) SCC 173 reiterated what had been said by the majority of the Nine Judge Bench in the case of Indra Sawhney with regard to Article 16(1) and held the same to be applicable to Article 15(1) and (4) as well. The words of

caution with regard to creation of special categories set out in the judgment of majority in the case of Indra Sawhney are,

" But at the same time one thing is clear. It is in a very exceptional situation given – and not for all sundry reasons – that any further reservations of whatever kind, should be provided under clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress the specific situation. The very presence of clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under clause (4) as well as under clause (l), the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do"

"*The Court in Anilkumar's case, after setting out these words of caution, has held that "Though the said observations were made with reference to clauses (1) and (4) of Article 16, the same apply with equal force to clauses (1) and (4) of Article 15 as well"*

(viii) In the decision of Division Bench of this Court made in W.A.No.2624 of 2001 etc., **(Manupatra Manu/TN/007/2002) (S.Muthu Senthil and Others Vs. State of Tamilnadu, Education Department, Chennai and others)** interalia at Paragraph No.13, it is observed as follows:

"13. For the foregoing discussion, we hold that the rural reservation provided at first with 15% and then extending to 25% for admission in professional colleges in the State of Tamilnadu, by issuance of the impugned Governmental orders by the Government, has got absolutely no nexus to the object to be achieved and there is no intelligible differentia either and that that the Government has failed to justify the discrimination and as such they are invalid being infractive of Article 14

of Indian Constitution and are hereby set aside....”

(ix) In the decision of the Hon'ble Supreme Court reported in (2016) 9 SCC 749 **(State of Uttarpradesh and others V. Dinesh Singh Chauhan)** at Paragraph Nos.24, it is observed as follows:

> *“24. By now, it is well established that Regulation 9 is a self – contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed thereunder, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see Preeti Srivastava V. State of M.P. 5(1999) 7 SCC 120: 1 SCEC 742) The procedure for selection of candidates for the postgraduate degree courses in one such area on which the Central legislation and regulations must prevail.*
>
> *(emphasis supplied)*

(x) In the decision of Punjab and Haryana High Court, reported in 1990(1) **I.L.R. Punjab and Haryana 282 (N.K.Batra and Others V. Kurukshetra University and Others)** at Paragraph No.14, it is observed as follows:

> *“14.....On the strength of the afore-quotation, it would be legitimate for us to hold that no discrimination can be practised between students who pass the 10+2 examination from the Haryana Board and between students who pass the same examination from the Central Board. This is not only the mandate of the Supreme Court but is the policy of the Government of India as well, as aforequoted. Because of this circumstance, letter Annexure r-4 with the return filed by the*

respondents, being a letter from the Assis- that Educational Adviser, Government of India, Ministry of Human Resource Development (Department of Education) to the Principal Regional Engineering College, Kurukshetra, saying that the Ministry had no objection to the adoption of the process of normalisation of qualifying marks indicated thereon for admission to the 4-year B.Tech Degree Course, for the Session 1989-90, by College, pales into insignificance and not worthy of any credit. The law laid down by the Supreme Court in putting at part the students of the Haryana Board and the Central Board specifically ruling that they have not to to be discriminated inter se was law not based on the government policy as submitted by the Attorney General but was rather a view authoritatively expressed before-hand independently. So, in the face of the authoritative pronouncement in Dr.Pradeep Jain's case (supra) any effort to disturb equality existing between students of the Haryana and the Central Board in the matter of the marks obtained by them in their respective examinations, would run counter to the decision of the Supreme Court in the said case, and on that account principle of normalisation is illegal, discriminatory and violative of Articles 14 and 15 of the Constitution of India. It deserves to be struck down."

(emphasis supplied)

37. A careful perusal of the observations made in all the above case laws cited on behalf of the petitioners would show that they are fully supporting the case of the petitioners and therefore, I am not reiterating the law laid down therein, except to state that I respectfully follow.

38. The learned Advocate General appearing for the State relied on the following decisions:

In the decision of the Honourable Supreme Court reported in **(2016) 7 SCC 353 (Modern Dental College and Research Centre and Others V. State of Madhya Pradesh and Others)** at Paragraph No. 101, 106 & 149, it is observed as follows:

> *"101. To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards"would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc., and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc., In fact, such coordination and determination of standards, insofar as medical education is concerned, is achieved by parliamentary legislation in the form of Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short "MCT") therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as coordination or standards and that of educational institutions. When it comes to regulating "education" as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in List III Entry 25, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject-matter of List II entry 11 (Education including universities, subject to the provisions of Entries 63,64, 65 and 66 of List I and Entry 25 of List III". Thus, power to this extent was given to the State Legislatures. However, this entry was omitted by the Constitution (Forty-Second Amendment) Act, 1976 with effect from 03.07.1977 and at the same time List II Entry 25 was amended (Unamended Entry 25 in List IIII read as : "Vocational and technical training of labour") . Education, including university education, was thus transferred to the Concurrent List and in the process technical*

and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two entries relating to education, one in the Union List and the other in the Concurrent List, coexist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to coordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union /Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by List III Entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66.

106. In view of the above, there was no violation of right of autonomy of the educational institutions in CET being conducted by the State or an agency nominated by the State or in fixing fee. The right of a State to do so is subject to a Central law. Once the notifications under the the Central statutes for conducting CET called "NEET" become operative, it will be a matter between the States and the Union, which will have to be sorted out on the touchstone of Article 254 of the Constitution. We need not dilate on this aspect any further.

....

....

149. I have no hesitation in upholding the vires of the impugned legislation which empowers the State Government to regulate admission process in institutions imparting higher education within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of "higher education"being one such field which directly affects the growth and development of the State, it becomes prerogative of the state of take such steps which further the

welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee, etc., governing the institutions running in that particular State except the Centrally funded institutions like IIT, NIT, etc., because no one can be a better judge of the requirements and inequalities in opportunity of the people of a particular State than that State itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams."

(emphasis supplied)

39. No doubt, the learned Advocate General heavily relied on the above said decision of the Apex Court to emphasize that the present impugned order is sustainable as State power to issue the same is traced by virtue of entry 25. There is no difficulty in accepting such contention, provided the impugned proceeding is in the form of State Legislation. Admittedly, it is only an executive order passed by exercising power under Article 162 of the Constitution of India and therefore, the same cannot be equated and treated as a State Legislation. Neither the impugned order can take the shape and character of State Legislation. In fact at paragraph No.149 of the above said Judgement, it is clearly stated that only State Legislation can create equal level playing field for the students who are coming out from the State Board and other streams. In these cases, admittedly, the attempt made by the State to bring the Legislation is still is in the form of a Bill, which is yet to get the assent of the President. Therefore, I find that the above decision, instead of helping the respondents, is only supporting the case of the petitioners for want of State Legislation on the issue involved in these cases.

40. He further relied on the decision of Hon'ble Supreme Court reported in **1970 AIR 35 (Chitra Ghosh and Another V. Union of India and others)** wherein among various things, it is observed as follows:

> *" ...We are unable to see how Art. 15(1) can be invoked in the present case. The rules do not discriminate between any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Nor is Art 29(2) of any assistance to the appellants. They are not being denied admission into the Medical college on grounds only of religion, race, caste, language or any of them. This brings us to Art. 14. It is claimed that merit should be sole criterion and as soon as other factors like those mentioned in clause (c) to (h) of Rule 4 are introduced, discrimination becomes apparent. As laid down in Shri Ram Krishna Dalmia V. Shri Justice S. R.Tendolkar and others(1), Art. 14 forbids class legislation it does not forbid reasonable classification. In order to pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved. The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their won. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get admission into institutions imparting medial*

education in foreign countries. The cultural, Colombo Plan and thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu & Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the Stage itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong.

It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of Persons for whom it is essential to provide facilities for medical education. If the sources are properly (1)(1959) S.C.R.279 classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere withs the manner and method of making the classification. The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in' the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily – determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In Minor P.Rajendran V. State of Madras (1) it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to, the sources that are intended to supply the material. If the sources have been classified in the manner

done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection, for the purpose....."

41. Another decision Hon'ble Supreme Court reported in **(1980) 2 SCC 768 (Dr.Jagadish Saran and Others V. Union of India)** at Paragraph Nos.31 and 32, is also relied on by the learned Advocate General, wherein it is observed as follows:

"31. We agree with this approach and feel quite clearly that the State's duty is to produce real equality, rather egalitarian justice in actual life.

32. If university-wise classification for post-graduate medical education is shown to be relevant and reasonable and the differentia has a nexus to the larger goal of equalisation of educational opportunities the vice of discrimination may not invalidate the rule."

42. I do not think that the respondents can rely on the above said decisions of the Apex Court, since the present facts and circumstances are totally different from the one which were prevailing at the time of rendering those decisions. It is not in dispute that NEET has been introduced much later by virtue of the Regulations made by the Medical Council of India and also by introducing relevant provision viz., Section 10-D of the Indian Medical Council Act, 1956, stipulating that only the merit in the NEET has to be considered for admission to medical course. Therefore, the above decisions are also not helping the respondents in any manner.

43. Upon considering all the facts and circumstances of the present case, the arguments advanced on either side and the case laws cited and discussed as supra,

there is no difficulty for this Court to come to the conclusion that the impugned reservation amounts to discrimination among equals and thus, it violates Article 14 of the Constitution of India; that it is an arbitrary exercise of power; that it is totally unreasonable; that, under the guise of level playing, it makes the equals unequal; that it has no nexus between the object sought to be achieved; that it indirectly meddle with the object and process of NEET and that it amounts to compromising on the merits of the selection.

44. Competency to pass an order is one thing and entitlement to do so is another thing. Constitutional competency and jurisdictional power to pass an executive order should always be within the bounds of law and not by over-riding or side-lining the same. When NEET is already occupying the field, the present attempt to dilute its object, either directly or by any indirect means, that too, by way of an executive order, becomes unlawful.

45. Before parting with the case, this Court wants to place on record and makes it very clear that certainly, it is not against the promotion of interest of the students from rural background, more particularly, those who are studying in State Board. It has every concern for their upliftment. But when such promotion and upliftment of their interest are sought to be achieved through some unlawful means, more particularly, at the risk of causing grave discrimination among equals, in this case, insofar as the qualifying examination viz., NEET is concerned, this Court cannot be a mute spectator, especially, when those aggrieved equals knock the door of this

temple of justice and seek for redressal of their grievance. Number of litigant students who are before this Court may be minimal. But that does not matter. What the cause they have brought in before this Court is important.

46. Thus, this Court is of the firm view that the impugned proceedings, namely G.O.(Ms) No.233 dated 22.06.2017 and the relevant Clause, namely Clause IV(19) of the Prospectus of MBBS/BDS admission 2017-18, dealing with the impugned reservation are bad in law and thus, they cannot be sustained. Accordingly, all the Writ Petitions are allowed and the impugned G.O.(Ms) No.233, Health and Family Welfare (MCA-1) Department dated 22.06.2017 and the impugned Clause IV(19) of the Prospectus of MBBS/BDS admission 2017-18, are quashed. Consequently, the respondents are directed to prepare a fresh merit list and conduct the counselling accordingly. It is made clear that this order is not confined to the writ petitioners alone and on the other hand, it shall apply to all the students concerned. No costs. Consequently, connected miscellaneous petitions are closed.

14.07.2017

Speaking/ Non-speaking order

Index:Yes/No

vsi/mk/ssd

Note: Issue order copy today (14.07.2017)

K.RAVICHANDRABAABU,J.

Vsi/mk/ssd

Pre-delivery order made in

W.P.No.16341/2017 etc. batch case

14.07.2017