

N.T.R. UNIVERSITY OF HEALTH SCIENCES, VIJAYWADA

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v.

G. BABU RAJENDRA PRASAD AND ANR.

MARCH 10, 2003

[V.N. KHARE, CJ, S.B. SINHA AND
DR. AR. LAKSHMANAN, JJ.]

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Educational Laws:

Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974—Reserving 85% of seats in each course for local candidates in relation to local area for admission, balance 15% reserved for candidates of non local area—Government order making reservation to the extent of 15%, 6% and 25% for SC, ST and backward classes covering 85% of the reserved seats and no reservation in respect of balance seats—Validity of—Held, Such policy decision is valid if it is reasonable and is in conformity with the Presidential order—As reservation is made for the reserved category candidates on the total number of seats available in each course, reservation for the remaining seats does not arise—Thus High Court erred in directing reservation for 15% of open seats—Constitution of India, 1950 Articles 371-D, 15 and 16.

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The Presidential Order viz. A.P. Educational Institution (Regulation of Admissions) Order, 1974 provided that for admission to Universities or educational institutions 85 % of the seats in every course of study were reserved in favour of local candidates in relation to local areas and balance seats of 15% were laid unreserved for open category candidates. Thereafter, the Government order was passed by which reservation to the extent of 15%, 6% and 25% were made for Scheduled Castes, Scheduled Tribes and Backward classes covering 85% of reserved seats but no reservation was made with regard to 15% of the balance seats. Thereafter, State enacted A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capital Fee) Act, 1983 and also framed A.P. Medical College (Admissions into Post Graduate Medical Course) Rules, 1997. University of Health Sciences, Andhra Pradesh also made regulations for admission to Post Graduate Medical courses in the Medical College in terms of Presidential Order as well as 1997 Rules. Respondent, a Scheduled caste candidate seeking admission to Post Graduate Medical

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A courses challenged the policy decision. High Court allowed the petition and directed the appellant to reserve seats for reserved category for the 15% open seats also. Both the review petition and the letters patent appeal filed by the appellant were dismissed. Hence the present appeals.

B Appellant contended that the High Court erred in issuing the impugned direction as it failed to take into consideration that having regard to the fact that the appellant has already made reservations to the extent of 15%, 6% and 25% for Scheduled Castes, Scheduled Tribes and Backward Classes respectively covering 85% of the seats, no further reservation could be made in respect of balance 15% of the seats as by reason thereof the seats reserved for the reserved category candidates would exceed 50%.

C Allowing the appeals, the Court

D HELD: 1.1. Article 371-D of the Constitution of India contains a special provision applicable to the State of Andhra Pradesh only. 54% of seats are required to be filled up from open categories and 46% of seats are to be filled up from the reserved category candidates in each of the three regions from the medical colleges and engineering colleges. Having regard to the reservations made region-wide, indisputably 85% of seats are to be filled up from amongst local candidates whereas only 15% of seats are to be filled up from amongst outside candidates.

E [792-G-H; 793-A]

F 1.2. Articles 15 and 16 of the Constitution of India provide for enabling provisions. By reason thereof the State would be entitled to either adopt a policy decision or make laws providing for reservations. How and in what manner the reservations should be made is a matter of policy decision of the State. Such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness as also the requirements of the Presidential Order made in terms of Article 371-D of the Constitution. [793-A-B]

G 1.3. It is not in dispute that limited seats are available for admission in the super speciality courses. It may be true that normally the reservation has to be made for the entire State but in terms of Article 371-D of the Constitution of India reservation has to be made region-wise. The seats have been reserved indisputably on total available seats in each discipline **H** and those who come within the zone of consideration are considered for

admission from amongst the reserved category candidates. Once it is found that reservation has been made for the reserved category candidates on the total number of seats available in each course, the question of any further reservation for the remaining seats would not arise. [793-C-E] A

1.4. In the event, the ratio of the impugned judgment of the High Court is given effect to having regard to the limited number of seats available by providing reservation of an additional seat, principle of reservation to the extent is 50% would be violated. Furthermore, it is not for the High Court to say as to the efficacy or otherwise of the policy of the State as regards providing for reservation for the reserved category candidates and in that view of the matter the High Court, committed a manifest error in issuing the impugned directions, as a result whereof percentage of reservation would exceed 46%. Such a direction by the High Court is not contemplated in law. [798-D-E] B C

Indra Sawhney v. Union of India and Ors., [1992] Supp. 3 SCC 215; *R.K. Sabharwal v. State of Punjab*, [1995] 2 SCC 745; *A.I.I.M.S. Students Union v. A.I.I.M.S.*, [2002] 1 SCC 428; *Marri Chandra Sekhar Rao v. Dean, Seth G.S. Medical College and Ors.*, [1990] 3 SCC 130; *Balaji v. State of Mysore*, [1963] Supp. 1 SCR 439; *N.M. Thomas v. State of Kerala*, AIR [1976] SC 490; *Rangarajan v Railway Karamchari Sangh*, AIR (1981) SC 298 and *K. Duraisamy and Anr. v. State of T.N. and Ors.*, [2001] 2 SCC 538, referred to. D E

Constitutional Law of India by H.M. Seervai Fourth Edition p 611, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4852-53 of 2000. F

From the Judgment and Order dated 29.3.2000 of the Andhra Pradesh High Court in W.A. Nos. 341 and 1500 of 1999.

G. Prabhakar, for the Appellant. G

The Judgment of the Court was delivered by

S.B. SINHA, J. Whether the Government of Andhra Pradesh while framing A.P. Educational Institutions (Regulation of Admissions) Order, 1974 made in terms of Article 371-D of the Constitution of India was bound to provide reservation for 15% of non-local seats, although reservations in terms H

A of its policy decision had been taken in respect of seats available for local candidates, is the question involved in these appeals which arise out of a judgment and order dated 29.03.2000 of the Full Bench of the Andhra Pradesh High Court. The First Respondent herein is said to be a member of Scheduled Caste. He questioned the validity of policy decision of the State of Andhra Pradesh as regards non-reservation for Scheduled Castes, Scheduled Tribes and Backward Classes by filing a writ petition in the High Court.

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C A learned Single Judge of the Andhra Pradesh High Court by a judgment and order dated 27.10.1998 directed the appellant herein to reserve seats for the reserved category for 15% open seats also. A review application filed by the appellant herein before the learned Single Judge was dismissed. Thereafter, the appellant preferred a letters patent appeal before the Division Bench questioning the said order of the learned Single Judge. The Division Bench, however, noticing conflict in some decisions on the question referred the matter to a Full Bench on the following question :

D “Whether the reservations in terms of Article 15(4) of the Constitution of India in favour of Scheduled Castes, Scheduled Tribes and Backward Classes could be provided even in respect of 15% of the unreserved seats under the Presidential Order, 1974.”

E By reason of the impugned judgment the said appeals were dismissed. The appellant is, thus, in appeal before us.

F By reason of the Constitution 32nd Amendment Act, a special provision by way of Article 371-D of the Constitution of India was inserted in respect of the State of Andhra Pradesh relating to both employment and education; pursuant to or in furtherance whereof the President was empowered to make orders in relation thereto contained in different provisions for different parts of the State. Pursuant to or in furtherance of the said power, A.P. Educational Institution (Regulation of Admissions) Order, 1974 (hereinafter referred to as the Presidential Order) was made. The relevant provisions of the Presidential Order are as under :-

G (A) Para-2 “available seats” in relation to any courses of study as number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. It defines “local area” in respect of any University or other educational institution as the local area specified in para-3 of the order for the purpose of admission to such University or other educational

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institution.

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(B) Para-3 carves out the local areas by reference to the earliest Universities operating in Andhra, Telengana and Rayalaseema areas of the State, Andhra University, Osmania University and Sri Venkateswara University and delineates the district comprised in such local area.

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(C) Para-4 sets out the qualifications for determining local candidates with reference to study in an educational institution or institutions for specified period or in the alternative with reference to residence in the local area.

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(D) Para-5 enjoins that admission to 85% of the available seats in every course of study provided by Andhra, Nagarjuna, Osmania, Kakatiya or Sri Venkateswara Universities or by educational institution other than a State wide University or State-wide educational institution which is subject to control of the State Government, shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution. Sub-para (2) of this para states while determining number of seats to be reserved in favour of the local candidates under sub para (1) any fraction of seats shall be counted as one. The proviso to the para ordains that there should be at least one unreserved seat.

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(E) Para-8 enables the President by order to require the State to issue such directions as may be necessary or expedient effectuating the provisions of the order to any University or other educational institution which shall comply with such directions.

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(F) Para-9 reiterates the overriding effect set out in clause (10) of the parent Article and mandates that the provisions of the order shall have the effect notwithstanding anything contained in any statute, ordinance, rules, regulations, or other orders whether made before or after the commencement of the Presidential Order irrespective of the admissions.

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(G) Para-10 provides that nothing in the order shall affect the operation of any provisions made by the State Government or other competent authority whether before or after the commencement of the order in respect of reservations in the matter of admissions to any University or the educational institution in favour of women, socially and

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A educationally backward class of citizens, the Schedule Castes and Scheduled Tribes, in so far as such provisions are not inconsistent with the order.

B With a view to prescribe the procedure adopted for admissions, the Government of Andhra Pradesh issued G.O.Ms. No.646 dated 10.7.1979 whereby and whereunder it was directed that the procedure framed in Annexure-III thereto would be followed in the matter of implementation of reservations in favour of local candidates provided under the Presidential Order in respect of non-Statewide Universities and non-Statewide educational institutions subject to its control; the relevant provisions whereof are as under:-

C “1. The number of “available seats” in the course of study shall first be computed by deducting from the total number of sets provided in that course, and the number of seats reserved for candidates from outside the State.

D 2. The number of seats reserved in favour of local candidates in relation to local area in respect of the University or other educational institution concerned shall then be determined; this number shall be 85% of the available seats, any fraction of a seat being counted as one provided that there shall be at least one unreserved seat;

E 3. From amongst all eligible applicants, whether such applicants are local candidates or not, a provisional list of admission to fill the available seats shall be drawn up. This provisional list shall be prepared on the basis of the relative merit of all eligible applicants and the reservations in favour of Scheduled Castes, Scheduled Tribes and Backward Classes, women etc., as provided under the relevant rules of admission. The candidates included in the provisional admission list shall be arranged in order of merit or where the rules of admission provide for their arrangement in any other order, in the order so provided;”

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G Mr. G. Prabhakar, learned counsel appearing on behalf of the appellant has raised a short question in support of this appeal. The learned counsel would submit that the High Court committed a manifest error in issuing the impugned direction insofar as it failed to take into consideration that having regard to the fact that the appellant has already made reservations to the extent of 15%, 6% and 25% for Scheduled Castes, Scheduled Tribes and Backward Classes respectively covering 85% of the seats, no further

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reservation could be made in respect of balance 15% of the seats as by reason thereof the seats reserved for the reserved category candidates would exceed 50%. It has been pointed out that out of 17 seats for admission in the post graduate courses 8 seats were already reserved which would account for 46% of the seats and, thus, if reservation is directed to be made in relation to 2 seats, which would have gone to the local candidates, one seat out of it will have to be reserved, which would mean reservation in excess of the quota of reservation made in terms of Regulation 4 which reads thus :

“4. RESERVATION IN FAVOUR OF THE LOCAL CANDIDATES

- (A) Admission to 85% of the seats shall be reserved in favour of the local candidates in relation to the local area as provided in A.P. Educational Institutions (Regulations of Admission) Order, 1974 as amended from time to time.

STATE-WIDE COURSE :

M.D.(R.T) is State-wide course and admission to this course shall be regulated as per the provision in the A.P. Educational Institutions (Regulations of Admission) Order, 1974 for State-wide course.

(B) LOCAL AREA :

- (i) The part of the State comprising the Districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Krishna, Guntur and Prakasam (Andhra University and Nagarjuna University area) shall be regarded as the local area for the purpose of admission to the Andhra Medical College, Visakhapatnam, Rangaraya Medical College, Kakinada and Guntur Medical College, Guntur.
- (ii) The part of the State comprising the Districts of Adilabad, Hyderabad (including twin cities) Rangareddy, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad and Warangal (Osmania University and Kakatiya University area) shall be regarded as local area for the purpose of admission to the Osmania Medical College, Hyderabad, Gandhi Medical College, Hyderabad and Kakatiya Medical College, Warangal.

A (iii) The part of the State comprising the Districts of Ananthapur, Kurnool, Chittoor, Cuddapah and Nellore (S.V. University area) shall be regarded as local area for the purpose of admission to the Kurnool Medical College, Kurnool, and S.V. Medical College, Tirupati.

B (C) LOCAL CANDIDATES :

(I) A candidate for admission shall be regarded as local candidate in relation to a local area.

C (i) If he/she studied in an Educational Institution or Educational Institutions in such local area for a period of not less than 4 consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared in relevant qualifying examination.

Or

D (ii) Where during the whole or any part of the 4 consecutive academic years ending with the academic year in which he/she appeared or as the case, may be first appeared for the relevant qualifying examination, he/she has not studied in Educational Institutions, if he/she had resided in that local area for a period of not less than 4 years immediately preceding the date of commencement of the relevant qualifying examination, in which he/she appeared or as the case may be first appeared.

E (II) A candidate for admission to any course of study who is not regarded as a local candidate under sub-regulation (1) above in relation to any local area shall

F (i) If he/she has studied in educational institutions in the State for a period of not less than 7 consecutive academic years ending with academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination be regarded as local candidate in relation to;

G (a) Such local area where he/she has studied for the maximum period out of the said period of 7 years

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Or

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(b) Where the period of his/her study in two or more local areas are equal, such local area where he/she has last studied in such equal periods

(ii) If during the whole or any part of seven consecutive academic years ending with academic year in which he/she appeared or as the case may be first appeared for relevant qualifying examination, he/she has not studied in the educational institution in any local area, but he/she has resided in the State during the whole of the said period of 7 years be regarded as a local candidate in relation to

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(a) Such local area where he/she has resided for the maximum period out of the said period of seven years.

Or

(b) Where the period of his/her residence in two or more local areas are equal, such local area where he/she has resided last in such equal periods.

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EXPLANATION : (for purpose of this sub-regulation)

(i) "Educational Institutions" means a University or any Educational Institution recognized by the State Government, a University or any other competent authority.

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(ii) "Relevant qualifying examination in relation to admission to any course of study" means the examination, a pass in which is the minimum educational qualification for admission to such course of study.

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NOTE : The relevant qualifying examination for admission to Post-Graduate courses is MBBS examination. The question whether the candidate is a local candidate or not will be determined with reference to his/her first appearance in the Part II of Final MBBS examination.

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(iii) (a) In reckoning the consecutive academic years during which a candidate has studied any period of interruption of his/her study by reasons of his/her failure to pass any examination and any period of his/her study in a statewide University or a

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- A statewide educational institution shall be disregarded.
- (b) The status of candidates who passed MBBS from Siddhartha Medical College will be decided basing on their study period prior to their admission into MBBS course at Siddhartha Medical College for arriving at the local and non-local status, since it is a statewide institution.
- (iv) The question whether any candidate for admission to any course of study has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his/her parent or guardian.
- (D) While determining under sub-regulation (A) the number of seats to be reserved in favour of local candidates, any fraction of seat shall be counted as one, provided that there shall be one unreserved seat.
- (E) If a local candidate in respect of a local area is not available to fill any seats reserved or allocated in favour of local candidate in respect of that local area such seats shall be filled in as if it had not been reserved.
- (F) The applicant who claims to be a local candidate with reference to sub-regulation 4(C) (1)(i) or 4(C)(II)(i) shall produce in the form of study certificate/certificates issued by the Head of the Educational Institution/Institutions concerned indicating the details of the year or years in which the candidate has studied in educational institution in such local area for a period of not less than 4/7 consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for the Part-II of Final MBBS examination.
- Those who did not qualify as local candidate under sub-regulation 4(C)(1)(i) and 4(C)(II)(i) but claim to qualify by virtue of residence shall produce a certificate issued by an officer of the Revenue Department not below the rank of Mandal Revenue Officer independent charge of sub-taluk/Mandal in the form annexed to G.O.P. No.628 education dated 25.7.1974 appended to application form with necessary modification.
- (G) The following categories are eligible to apply for admission to the remaining 15% of un-reserved seats:

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- (i) All candidates defined under sub-regulation (C) of regulation-4 A
- (ii) Candidates who have resided in the State for total period of ten years excluding period of study outside the State or either of those parents have resided in the State for a total period of ten years excluding period of employment outside the State.
- (iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector Corporation, Local Bodies, Universities and other similar quasi-Public Institutions in the State. B
- (iv) Candidates, who are spouses of those in employment of this State or Central Government, Public Sector Corporations, Local Bodies, Universities and Educational Institutions recognized by the Government or a University or other competent authority and similar other quasi Government Institutions within the State. C
- (v) Candidates, who are employed in the State Government undertakings, Public Sector Corporation, Local Bodies, Universities and other similar quasi-Public Institutions within the State. D
- (vi) Candidates who are spouses of the local candidates as per regulation 4(C).” E

The State of Andhra Pradesh enacted the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983. In exercise of its rule making power conferred upon it thereunder, the State Government also framed the A.P. Medical College (Admissions into Post Graduate Medical Course) Rules, 1997. By reason of G.O. Ms. No.260 dated 10.7.1997 reservation to the extent 15%, 6% and 25% of the total number of seats was notified in each group of Degree and Diploma Courses in favour of Scheduled Castes, Scheduled Tribes and Backward Classes respectively, to the extent of 85% of the seats reserved in favour of the local candidates in relation to the local areas in terms of the Presidential Order. So far as 15% of the balance seats are concerned, the same were made unreserved i.e. seats for open category candidates. The University of Health Sciences, Andhra Pradesh also made regulations for admission to Post Graduate Medical Courses in the Medical College in University of Health Sciences for the academic year 1997-98 in terms of the Presidential Order as also the 1997 Rules. F G

Pursuant to Presidential Order of 1974, the State of Andhra Pradesh H

A was sub-divided into three local university areas, namely, (1) Osmania University; (2) Andhra University and (3) Sri Venkateshwara University. All these three university areas are situated in three different regions of the State envisaged under the Presidential Order.

B A bare perusal of the definition of local area read with Paragraphs 3, 4 and 5 of the Presidential Order, as referred to herein before, it would be evident that 85% of the seats are reserved for local candidates in relation to local areas. So far as an university area is concerned, a local candidate in one particular university area would be a non-local one in another. The criteria for admission of a candidate in the super speciality courses in the university on the ground of being local or non-local is, therefore directly referable to the university area and not the boundaries of the State of Andhra Pradesh.

C It was not the case of the respondents that the Health University regulations framed by the State of Andhra Pradesh was violative of the Presidential Order, 1974 or Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997. It is further not in dispute that in terms of Rule 4 of the Andhra Pradesh Post Graduate Admission Rules read with the Health Regulations; 85% of the seats in each local areas are reserved for local candidates. It was not the contention of the respondents that admissions in the courses of studies had not been made on the basis of merit of the candidate in the entrance examination upon following the rules of reservations nor was it the contention of the respondents that the reservation made by the State to the extent of 46% in favour of the reserved classes was *ultra vires* Articles 15 and 16 of the Constitution of India. In the matter of admission, the Health University had followed the procedure provided in Annexure III of G.O.(P) No. 646 dated 10.7.1979 having regard to the fact that by reason of the Presidential Order, 1974 only 85% of the seats are reserved in favour of the local candidates which are required to be confined to the university area only. We, thus, do not find any legal infirmity in the action of the appellants herein in directing that 15% reserved for candidates of non-local area may be filled up only on merit.

G Article 371-D of the Constitution of India contains a special provision applicable to the State of Andhra Pradesh only. 54% of seats are required to be filled up from open categories and 46% of seats are to be filled up from the reserved category candidates in each of the three regions from the medical colleges and engineering colleges. Having regard to the reservations made region-wide, indisputably 85% of seats are to be filled up from amongst local

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candidates whereas only 15% of seats are to be filled up from amongst outside candidates. A

Articles 15 and 16 of the Constitution of India provide for enabling provisions. By reason thereof the State would be entitled to either adopt a policy decision or make laws providing for reservations. How and in what manner the reservations should be made is a matter of policy decision of the State. Such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness as also the requirements of the Presidential Order made in terms of Article 371-D of the Constitution of India. B

It is not in dispute that limited seats are available for admission in the super speciality courses. It may be true that normally the reservation has to be made for the entire State but in terms of Article 371-D of the Constitution of India reservation has to be made region-wise. The seats have been reserved indisputably on total available seats in each discipline and those who come within the zone of consideration are considered for admission from amongst the reserved category candidates. Once it is found that reservation has been made for the reserved category candidates on the total number of seats available in each course; the High Court must be held to have committed a manifest error in issuing the impugned direction. C D

Having regard to the fact reservation has been provided to the extent of 46% of all the seats, the question of any further reservation i.e. for the remaining 15% of the seats would not arise. E

The High Court keeping in view the decision of this Court in *Indra Sawhney v. Union of India and Ors.*, [1992] Supp 3 SCC 215 was bound to proceed on the basis that the reservation cannot exceed 50%. In the said case it was held : F

“Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits-and what is more reasonable than to say that reservation under clause(4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. G

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While 50% shall be the rule, it is necessary not to put out of H

A consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

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C *Reservation being extreme form of protective measure* or affirmative action, it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50%. (emphasis supplied)

D In *R.K. Sabharwal v. State of Punjab*, [1995] 2-SCC 745, this Court observed:

E “When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward Class.

F The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed.

G Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.”

H Reservation is aimed at securing equal and protective discrimination. Recently, the purpose of reservation although in a different context has been

stated by this Court in *A.I.I.M.S. Students Union v. A.I.I.M.S.*, [2002] 1 SCC 428]. It was observed:

“Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped - the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation.

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Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the National constantly rising to higher levels. In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the Court, yet provide a valuable guide and aid to interpretation of Constitutional and legal issues. In case of doubt or choice, people’s wish as manifested through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the Courts.”

In *Marri Chandra Sekhar Rao v. Dean, Seth G.S. Medical College & Ors.*, [1990] 3 SCC 130, it was held:

“Equality must become a living reality for the large masses of the people. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. Existence of equality of opportunity depends not merely on the absence of disabilities but on presence of abilities. It is not simply a matter of legal equality. De jure equality must ultimately find its raison d’etre in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social

A environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality.”

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C The principle of fixing the percentage of reservation emanates from the doctrine of reasonableness. In *Balaji v. State of Mysore*, [1963] Supp. 1 SCR 439 this Court speaking through Gajendragadkar, J. struck down the Government Order impugned therein describing it as a fraud on the Constitution and the action of the executive was characterized as ‘patently and plainly outside the limits of the Constitutional authority conferred on the State’.

D In *N.M. Thomas v. State of Kerala*, AIR (1976) SC 490, it was held that reservation exceeding 49% had been permitted on the ground that SCs were not castes in a real sense and Article 16(4) was not an exception. Krishna Iyer, J. in *Karmachari Sangh* AIR (1981) SC 293, however, abandoned the aforementioned theory wherein his Lordship held that he was prepared to assume that they were castes and in any event Article 16(4) was an exception. In the said judgment, the final address of Dr. Ambedkar to the Constituent Assembly was dealt with in extenso.

E Sri H.M. Seervai in his classic treatise on “Constitutional Law of India”, Fourth Edition at page 611 states:

F “But this passage gives an incorrect impression of Dr. Ambedkar’s final address. He was not thinking of the SCs and STs or of the equality code as the following passage clearly shows:

G I remember the days when politically minded Indians resented the expression ‘the people of India’. They preferred the expression “The Indian nation”. I am of the opinion that in believing that we are a nation we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the word, the better for us. For, then only we shall realise the necessity of becoming a nation and seriously think of ways and means of realising the goal. The realisation of his goal is going to be very difficult-far more difficult that it has been in the United States. The

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United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For, fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.”

The learned author states:

A service which lacks an esprit de corps, that is, consciousness of and pride in belonging to a particular service, lacks an element essential to an efficient and harmonious administration. To balance the claims of these parties, in considering reservation quotas, requires critical analysis and calm deliberation; anger at the treatment meted out to classes to which one of the parties belongs does not help, for anger has been rightly likened “to a hasty servant who runs away before he has heard half the message”.

Further it was opined:

“It is necessary to remember that in litigation there are more parties than one, that it is wrong to gratify the plaintiff to the detriment of the defendant, and that, while sympathy is a most commendable quality, it never appears in a less attractive guise than when it is practiced at the expense of somebody else.

If past injustice done to members of SCs and STs because of the accident of their birth calls for condemnation, so does injustice done to members of ‘advanced classes’ because of the accident of their birth. It may be that members of ‘advanced classes’ may have to bear for a time, as best as they can, the injustice done to them by reverse discrimination, if a long standing historical wrong has to be righted. But 40 years have gone by since our Constitution came into force; and every year that passes increases the individual’s sense of injustice and injury. It is submitted that Judges who have to balance the claims of all the parties affected by any action under Article 16(4) ought to reflect that if the injustice of the past are to be strongly denounced now, then the future will denounce quite as strongly the injustices suffered by members of ‘advanced classes’ since 1950”.

A In *Indra Sawhney* (supra) it has been clearly held that the doctrine of principles of reservations have to be applied having regard to the vacancy position as existing in the entire area, the only exception being the cases, which would be falling under Article 16(4).

B In *K. Duraisamy and Anr. v. State of T.N. and Ors.*, [2001] 2 SCC 538, this Court held:

C “The mere use of the word ‘reservation’ per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially-and-educationally-backward classes of citizens or for the Scheduled Castes and Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of the expression will necessarily depend upon the purpose and object with which it is used.”

D In the event, the ratio of the impugned judgement of the High Court is given effect to having regard to the limited number of seats available by providing reservation of an additional seat, principle of reservation to the extent is 50% would be violated. Furthermore, it is not for the High Court to say as to the efficacy or otherwise of the policy of the State as regard providing for reservation for the reserved category candidates and in that view of the matter the High Court, in our opinion must be held to have committed a manifest error in issuing the impugned directions, as a result whereof percentage of reservation would exceed 46%. Such a direction by the High Court is not contemplated in law.

F The impugned direction of the High Court, therefore, cannot be sustained. It is set aside accordingly.

These appeals are allowed but in the facts and circumstances of the case, there shall be no order as to costs.

N.J.

Appeals allowed.