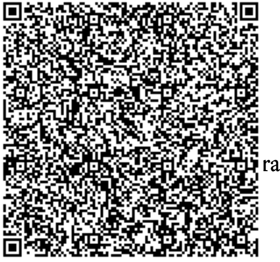

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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2435/2024 (F)

Miss Anagha Rajesh Naik,
d/o. Shri Rajesh Devendra Naik,
18 years of age, R/o. H. No. 43,
Gurukrupa, Ganganagar Road,
Curti, Ponda. ··· PETITIONER

Versus

1. The State of Goa, Through its Chief Secretary, Secretariat, Porvorim, Goa.

2. The Goa University, Through its Registrar/Controller of Examinations, Taleigao Plateau, Panaji-Goa.

3. The Director, Directorate of Technical Education, Porvorim-Goa.

4. The Dean, Goa Medical College, Bambolim-Goa.

5. The Mamlatdar of Ponda, Ponda-Goa.

6. The Deputy Collector & SDM, Ponda-Goa. ··· RESPONDENTS

Mr Nigel da Costa Frias with Mr Vishal Sawant, Advocates for the Petitioner.
Ms Maria Correia, Additional Government Advocate for the Respondents No.1 and 3 to 6.
Ms A. Harihar, Advocate for Respondent No.2.

WITH
WRIT PETITION NO.2460/2024 (F)

Mr Hrishikesh M. Satarkar,
19 years of age, Indian National,
Son of Mr Mahesh Satarkar,
Residing at House No. 36/1,
Bondbag, Ponda, Goa-403401. ··· PETITIONER

Versus

1. The State of Goa, Through its
Chief Secretary, Secretariat,
Porvorim. Goa.

2. The Goa University,
Through its Registrar/Controller of
Examinations, Taleigao Plateau,
Panaji, Goa.

3. The Directorate of Technical Education,
Through its the Director, Porvorim, Goa.

4. Goa Medical College, Through its
Dean, Bambolim- Goa.

5. The Mamlatdar of Ponda,
Ponda- Goa.

6. The Deputy Collector &
SDM, Ponda- Goa.

7. Anagha Rajesh Naik, Indian National,
Resident of House No. 43, Gurukrupa,
Ganganagar Road, Curti, Ponda, Goa.

8. The Collector & District Magistrate,
South Goa, Mathany Saladnha Administrative
Complex, Margao, Goa – 403601. … RESPONDENTS

Mr Shivan Desai with Mr Jay Mathew, Advocates for the Petitioner.
Ms Maria Correia, Additional Government Advocate for the Respondents No.1, 3, 4 to 6 and 8.
Ms A. Harihar, Advocate for Respondent No.2.

CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.

DATE: 4th OCTOBER 2024

JUDGMENT (Per M. S. Karnik, J.):

1. These petitions are decided by a common judgment. The petitioner Ms Anagha in Writ Petition No.2435/2024 (F) seeks admission to the M.B.B.S. course contending that she should be treated as a resident of Goa for the purpose of the Rules. The petitioner Mr Hrishikesh in the connected Writ Petition No.2460/2024 (F) challenges the residence certificate issued in favour of Ms Anagha. Mr Hrishikesh says that if Ms Anagha's petition is dismissed, it is he who will be allotted the seat for the first year M.B.B.S. course.

2. We refer to the facts in Ms Anagha's writ petition. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondent no.3 to accept the admission form of the petitioner and admit her for the first year professional degree course of M.B.B.S. at the institution of respondent no.4 – the Dean, Goa Medical College, Bambolim, Goa (GMC for short). The petitioner is aggrieved by the fact that the respondent no.3 – the Director, Directorate of Technical Education, Porvorim Goa has not granted admission to the petitioner for the course of M.B.B.S. to be pursued at the GMC.

3. The petitioner's paternal grandfather served the Electricity Department, Government of Goa since 1965 after migrating from Karwar till his retirement in the year 2000 as an Executive Engineer. Petitioner's

father though was born in Karwar, State of Karnataka, has been residing in Goa since birth with his father who was employed with the Government of Goa. Petitioner's father joined the Electricity Department, Government of Goa in the year 1997 as Junior Engineer and was further promoted to the post of Assistant Engineer in the year 2021. Petitioner's father is presently posted at the Head Office at Vidyut Bhavan, Panaji. Petitioner's father is permanently residing at the address mentioned in the cause-title.

4. Petitioner's parents were married in December 2001 and the said marriage was registered in the State of Goa. The petitioner was born on 08.07.2006 in the State of Goa. The petitioner including her parents have been issued a ration card by the Department of Civil Supplies and Consumer Affairs in respect of House No.43 at Ganganagar, Curti, Ponda. The petitioner belongs to the Other Backward Class (OBC) category. Petitioner's mother was appointed as Assistant Grade-2 in the Nuclear Power Corporation of India Limited situated at Kaiga, Uttar Kannada District, Karwar, Karnataka and presently working as Senior Assistant Grade-2 (F&A).

5. The petitioner pursued her studies from Std.Ist to Std.Xth at the Atomic Energy Central School, Kaiga situated at Karwar, which is around 100 kms. from the petitioner's place of residence in Goa. The petitioner was staying with her mother in the Government allotted quarters at Kaiga.

Being a girl child, the petitioner spent her early schooling years with her mother at Kaiga. The petitioner completed her secondary school examination in the year 2022 from Atomic Energy Central School, Kaiga situated at Karwar and passed with high grades. Upon completion of her secondary education, she requested for transfer certificate which was issued by the school at Kaiga on 12.08.2022 in order to pursue her higher secondary education in Goa and accordingly got herself admitted in the Mushtifund Aryan Higher Secondary School situated at Santa Cruz, Panaji. The petitioner completed her higher secondary education from the said higher secondary school in Goa.

6. The petitioner wanted to pursue her studies in M.B.B.S. in GMC which is affiliated to respondent no.2 – Goa University (University for short). The petitioner being interested in pursuing M.B.B.S. degree, undertook intense preparations and appeared for NEET Examination, 2024. She scored 538 marks at the NEET Examination and had an overall All India Ranking of 153220.

7. The GMC invited applications for admission for the 1st year of professional degree courses viz. M.B.B.S., B.D.S., etc for the academic year 2024-25 to be submitted from 13th to 24th May, 2024. The petitioner submitted her application form along with the required documents. The petitioner submitted residence certificate issued by the Mamlatdar of

Ponda, Adhaar Card, etc. which were scrutinized and verified by the respondent no.3 and no discrepancies were found in the said documents. Respondent no.3 prepared a provisional merit list published on their website on 14.06.2024 for the Engineering Courses for OBC category however there were no discrepancies nor remarks found as against the name of the petitioner. The petitioner went for counselling on 24.06.2024 to avail of the seat and was allotted a seat in Mechanical Engineering Degree Course as per the choice of the petitioner and upon verification of the documents, she was asked to report at the Goa Engineering College on 03.07.2024 for the completion of admission process. The petitioner withdrew her request in respect of the seat allotted for the engineering course as she was interested in becoming a doctor and to that end pursuing an M.B.B.S. course.

8. After the revised NEET score card was released, the respondent no.3 prepared a provisional merit list published on their website on 21.08.2024, for the NEET Based Course, for OBC category and against the name of the petitioner, it was indicated that the petitioner was eligible for the course such as M.B.B.S., etc. The petitioner attended the counselling held on 26.08.2024 when it was brought to her notice by the respondent no.3 that on verification of the documents it was found that the petitioner is not entitled for a seat at GMC, as the petitioner does not have a continuous residence in the State of Goa for a period of ten years since she did her

schooling at Kaiga, Karwar, State of Karnataka from Std. Ist to Std. Xth. The petitioner was informed that the residence certificate issued by the concerned Mamlatdar, Ponda needs to be verified. The petitioner thereafter requested the respondent no.3 to re-verify the documents, however, the respondent no.3 responded that though the seat was allotted to her at GMC for M.B.B.S. course, no acknowledgement card was issued nor the petitioner was informed of the reporting time at the institution for admission process. The respondent no.3 indicated that the petitioner would be informed of the decision once the verification is finalized. The petitioner was informed by the respondent no.3 that her documents were sent for verification to the concerned authorities and if the documents are found to be genuine and correct, she would be allotted a seat. However, if there is anything adverse reported, her seat would be allotted to the person next in the merit list.

9. Mr Nigel da Costa Frias, the learned counsel for the petitioner submitted that a reading of the eligibility criteria in the prospectus clearly reveals that the same does not exclude a candidate who is otherwise a permanent resident of Goa but due to some compelling circumstances does not possess continuous physical residence for ten years in the State of Goa. It is submitted that petitioner's father is a permanent resident of Goa. He submits that she was born in Goa and being a girl child had to accompany her mother. She did not have a choice. It is submitted that for all practical

purposes she will have to be regarded as resident of Goa there by satisfy the eligibility criteria. In support of his submissions, Mr Costa Frias relied upon the following judicial pronouncements:

i) ***Smt. Jeewanti Pandey v/s. Kishan Chandra Pandey – (1981) 4 SCC 517;***

ii) ***Meenakshi Malik v/s. University of Delhi and Ors. - (1989) 3 SCC 112;***

iii) ***Rajiv Purshottam Wadhwa v/s. State of Maharashtra, through its Department of Medical Education and Drugs & Ors. - 2000 SCC OnLine Bom 359.***

10. Ms Maria Correia, learned Additional Government Advocate for the State submitted that the petitioner does not fulfil the eligibility criteria laid down in the prospectus. It is submitted that there is no challenge to the Rules. It is submitted that the petitioner does not fulfil the basic eligibility criteria of ten years continuous residence in the State of Goa as she admittedly pursued her schooling from Std.Ist to Std.Xth outside State of Goa and hence on the plain reading of the eligibility criteria stipulated in the prospectus, the petitioner is ineligible to be considered from the category in which she has applied. In support of her submissions Ms Maria Correia relied upon the following judicial pronouncements:-

i) ***Shri D. P. Joshi v/s. State of Madhya Bharat & Anr. - 1955 SCC OnLine SC 4;***

ii) *Kumari N. Vasundara v/s. State of Mysore & Anr. - 1971 (2) SCC 22;*

iii) *Dr. Pradeep Jain & Ors. v/s. Union of India & Ors. - (1984) 3 SCC 654;*

iv) *Yellamalli Venkatapriyanka v/s. State of Maharashtra, through its Department of Medical Education & Drugs Mantralaya & Anr. - 2018 SCC OnLine Bom 10293;*

v) *Mohd. Shoaib Mujtaba & Anr. v/s. The State of Maharashtra & Ors. - Special Leave Petition (Civil) Diary No(s).27771/2018;*

vi) *Rajdeep Ghosh v/s. State of Assam & Ors. - (2018) 17 SCC 524;*

11. Mr Shivan Desai, learned counsel appearing for the petitioner in the connected Writ Petition No.2460/2024 (F) argued on the lines similar to the one advanced by Ms Correia. It is submitted that the prospectus is in the nature of executive instructions issued in exercise of powers under Article 162 of the Constitution of India, having force of law and therefore there cannot be any departure from the prospectus in the matter of eligibility prescribed. It is submitted that providing the condition of 10 years physical residence within the State of Goa is permissible in law in view of the law laid down by the Hon'ble Supreme Court and even otherwise there is no challenge to the eligibility criteria provided in the prospectus. Mr Desai submitted that taking a view in favour of the petitioner would tantamount to including a new eligibility criteria in the

prospectus which exercise is impermissible as it is in the exclusive domain of the State Government to provide for such criteria. It is submitted that no departure from the prospectus can be permitted in view of the plain and unambiguous language of the eligibility criteria. It is submitted that the State has decided to specify the categories, which exercise should be best left to the State and no tinkering in any of the categories could be insisted upon merely on the ground of hardship to the petitioner. It is further submitted that exceptions have been carved out to the general eligibility criteria and though the petitioner had an opportunity of applying in the category specially meant to cover cases like the petitioner, having failed to avail the concession, it is now not open for the petitioner to lay a claim in the general category. It is further submitted that when the language of the prospectus is clear and unambiguous, it is then not open for this Court to interpret the provision which will have an effect of creating a new category altogether. In support of his submissions Mr Desai relied upon the following judicial pronouncements:-

i) *United Tribals Associations Alliance & Anr. v/s. State of Goa, through its Chief Secretary & Ors. - 2020 SCC OnLine Bom 938;*

ii) *Jacob Puliyel v/s. Union of India & Ors. - 2022 SCC OnLine SC 533;*

iii) *Dr. Pradeep Jain & Ors. v/s. Union of India & Ors. (supra);*

12. Heard learned counsel for the parties at length. The rival contentions now fall for our determination.

13. The admitted facts are that the petitioner's paternal grandfather was an employee of the State Government of Goa and residing in Goa since 1965. Petitioner's father though born in Karwar, resided in Goa with his parents and is working with the State of Goa since 1997 till date. Petitioner's parents married in the State of Goa. They are permanent residents of State of Goa. Petitioner's mother is employed with Nuclear Power Corporation of India Limited situated at Kaiga, Uttar Kannada District, Karwar, Karnataka. As a girl child the petitioner stayed with her mother and did her schooling from Std.Ist to Std. Xth at Karwar in a school at Kaiga. The petitioner pursued her Std.XIth and XIIth in a higher secondary school at Goa. Petitioner's real brother did his schooling at Goa. Petitioner's mother is residing in the official quarters at Kaiga. Petitioner resided at Kaiga in the official quarters allotted to her mother. The petitioner is issued an Adhaar Card and Ration Card which indicates the permanent place of residence as the one mentioned in the cause title which is her father's permanent residence. Thus, the petitioner being a girl child obviously resided with her mother in the official quarters which was a compelling circumstance not in the hands of the petitioner. After she completed her Xth Std., the petitioner completed her XIth and XIIth from higher secondary school at Goa.

14. The petitioner is being denied admission to the M.B.B.S. course on the ground that she does not fulfil the eligibility criteria laid down in the prospectus for the professional degree course 2024-2025. Relevant to the present case is Part 5 of the prospectus which deals with the classification of categories. Clause 5.1 Category 1 – General which is the bone of contention is extracted hereunder reading thus:-

"***5.1 CATEGORY 1 - GENERAL***

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

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

Relaxations in Residential Requirements for Category 1 to 6 & 8

a) Any period spent by the applicant outside Goa on account of posting/leave/training/deputation of either of his/her parents being the Goa State Government Employee shall be counted towards

the continuous residence of 10 years (5 years for those whose either of the parent/grand parent is born in Goa).

b) Any period spent by the applicant in another State, under the scheme of Exchange Programme as the student of Navodaya Vidyalaya from Goa, shall be counted towards the ten years continuous residence in Goa (5 years for those whose either of the parent/grand parent is born in Goa).

c) An applicant born in Goa, who has studied and passed qualifying examination (Std. XIIth) from schools/colleges in the State of Goa, should have minimum residence of overall 10 years (5 years for those whose either of the parent/grand parent is born in State of Goa), as on last date of submission of application for admission."

15. Though the petitioner applied in the general category, reference needs to be made to Category 7 stipulated by Clause 5.7 of Part 5 of the prospectus in view of the emphasis placed by Ms. Correia and Mr Desai in support of their submissions, which reads thus:-

"*5.7 CATEGORY 7 - CSP (3%)*

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

(a) An employee of Central Government and Central Government Public Sector Undertakings, including Defence and Para-Military personnel, serving in the State of Goa in the academic year ***(June 23***

onwards) *preceding the year of admission or transferred to Goa till the date of submission of application form for admission. OR*

(b) An employee of Goa State Government including those of Goa State Government. Public Sector Undertakings and Educational Institutions recognised by Govt. of Goa, but not an employee on daily wages/NMR/work charged. OR

(c) A person residing in the State of Goa and the applicant must have studied and passed HSSC (Std. XIIth) examination from schools / colleges in the State of Goa.

(d) An employee of Central/State Government and Central/State Government Public Sector Undertaking, including Defence and Para-Military personnel who has served in Goa and has retired from their service, when posted in the State of Goa, and their wards continued to study in the schools in State of Goa, and pass the qualifying exam from schools in Goa."

16. The aforesaid clause is extracted for the reason that Ms Maria Correia and Mr Desai submitted that separate category was provided for those applicants one of whose parents are employees of the State Government. This is to buttress the submission that wherever the State Government wanted to provide for relaxation or exemption, the same has been provided for by the Rules and therefore beyond what is provided by the Rules there cannot be any further additions to the category. The submission is that the petitioner having failed to apply in Category 7, now cannot say that the

eligibility conditions prescribed under the general category should be interpreted in such a manner so to accommodate the petitioner.

17. A careful perusal of the decisions relied upon by the learned counsel would be necessary to take a considered view in the present facts and circumstances. The Judgement in *D. P. Joshi v/s. State of Madhya Bharat (supra)*, authored by His Lordship T.L. Venkatarama Ayyar J. speaking for the majority was rendered in a fact situation where the petitioner therein, a resident of Delhi, was admitted as a student at the Mahatma Gandhi Memorial Medical College at Indore in the State of Madhya Bharat. When he was in the third year class of M.B.B.S. course, the petitioner complained that the Rules in force in the institution discriminate in the matter of fees between students who are residents of Madhya Bharat and those who are not, and that the latter have to pay in addition to the tuition fee and charges payable by all the students a certain sum as capitation fee and that it is in contravention of Articles 14 and 15(1) of the Constitution of India. In the context of the Rules, Their Lordships held in paragraph 15 that the object of the classification underlying the impugned Rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. The Hon'ble Supreme Court held that education is a State subject, and one of the directive principles declared in Part IV of the

Constitution is that the State should make effective provisions for education within the limits of its economy (vide Article 41). The State has to contribute for the upkeep and the running of its educational institutions. Their Lordships observed that if the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality. It was held that the classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. The decision in ***State of Punjab v. Ajaib Singh*** was referred to while observing that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. It is in that context the Supreme Court held that the contention regarding the Rule imposing capitation fee is in contravention of Article 14 must be rejected.

18. In *Kumari N. Vasundara v/s. State of Mysore & Anr.* (supra), the Supreme Court was considering a question raised in Writ Petition under Article 32 of the Constitution relating to the constitutional validity of Rule 3 of the Rules for Selection of candidates for admission to the Pre-

professional/B.Sc. Part I Course for M.B.B.S. in Government Medical Colleges and certain seats in the private Medical Colleges in the State of Mysore framed by that State. The decision in *D. P. Joshi v/s. State of Madhya Bharat (supra)* was referred to in paragraph 7. Reference to paragraphs 7 and 8 is significant which read thus:-

> "***7.*** *In D. P. Joshi v. The State of Madhya Bharat and Another this Court had, while upholding by majority the rules, made by the State of Madhya Bharat, for admission to the Mahatma Gandhi Memorial Medical College, Indore, charging capitation fee from non-Madhya Bharat students laid down that in those rules the word "domicile" was used in its popular sense conveying the idea of residence. Venkataramma Ayyar, J., speaking for the majority said:*
>
>> *"It was also urged on behalf of the respondent that the word 'domicile' in the rule might be construed not in its technical legal sense, but in a popular sense as meaning 'residence', and the following passage in Wharton's Law Lexicon, 14th Edition, page 344, was quoted as supporting such a construction:*
>>
>> *'By the term 'domicile', in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile.'*
>>
>> *In* ***Memullen v. Wadsworth, (1889) 14 AC 631****, it was observed by the Judicial Committee that "the word 'domicile' in Article 63 (of the Civil Code of Lower Canada) was used in*

the sense of residence, and did not refer to international domicile'." What has to be considered is whether in the present context 'domicile' was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption therefrom refers only to bona fide residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows, clauses (a) and (b) refer to domicile, and they occur as part of the definition of 'bona fide resident'. In Corpus Juris Secundum, Volume 28, page 5, it is stated:

> *'The term 'bona- fide residence' means the residence with domiciliary intent.'*

There is therefore considerable force in the contention of the respondent that when the rule-making authorities referred to domicile in clauses (a) and 1(b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to Article 15(1) must fail."

Under the impugned rule in that case no capitation fee was to be charged from the students who were bona fide residents of Madhya Bharat, and the expression "bona fide resident" for the purpose of the rule was defined as (to quote the relevant portion):

"one who is-

(a) a citizen of India whose original domicile is in Madlıya Bharat, provided he has not acquired a domicile elsewhere, or

(b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquired a domicile in Madhya Bharat and

has resided there for not less than 5 years at the date, on which he applies for admission, or

(c) a person who migrated from Pakistan before September 30, 1948 and intends to reside in Madhya Bharat permanently, or

(d) X X X X."

In our view the word "domicile" as used in Rule 3 in the present case is also used to convey the idea of intention to reside or remain in the State of Mysore. If classification based on residence does not impinge upon the principle of equality enshrined in Article 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia. The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the Inhabitants of the State of Mysore. It is true that it is not possible to say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors, they have indeed a fundamental right as citizen to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for further studies or even otherwise. But these possibilities are permissible and inherent in our constitutional set-up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule. The problem as noticed in Minor P. Rajendran's case (supra) and as revealed by a large

number of cases which have recently come to this Court is that the number of candidates desirous of having medical education is very much larger than the number of seats available in medical colleges. The need and demand for doctors in our country is so great that young boys and girls feel that in medical profession they can both get gainful employment and serve the people. The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad-based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups therefore cannot be challenged on the ground of inequality violating Article 14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness. The counter-affidavit filed by the State on the other hand discloses the purpose to be that of serving the interests of the residents of the State by providing medical aid for them.

8. *The petitioner's argument that candidates whose parents have of necessity to remain out of Mysore State and who have also by compelling reasons to shift their residence frequently from one State to another without completing ten years in any one State would suffer because their parents cannot afford to arrange for their children's residence in Mysore State for ten years during the first 17 years of their age, merely, suggests that their is a likelihood of some cases of hardship under the impugned rule. But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule*

unconstitutional. For relief against hardship in the working of a valid rule the petitioner has to approach elsewhere because it relates to the policy underlying the rule. Redress for the grievance against the wide gap between the number of seats in the medical colleges and the number of candidates aspiring to become doctors for earning their own livelihood and for serving the needs of the country, is also to be sought elsewhere and, not in this Court, which is only concerned with the constitutionality of the rule."

19. It is thus seen that what was under challenge in the aforesaid decision was the constitutional validity of the Rule. While parting, Their Lordships observed that cases of hardship are likely to arise in the working of almost any Rule which may be framed for selection of candidates for admission out of a long list, however, this would not render the Rule unconstitutional for relief against the hardship. Their Lordships observed that for a relief against hardship in the working of a valid Rule the petitioner has to approach elsewhere because it relates to the policy underlying the Rule. In the present case the Rules are not under challenge.

20. In *Dr. Pradeep Jain & Ors. v/s. Union of India (supra)*, Their Lordships held that the scheme of admission to medical college may depart from the principle of selection based on merit where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals. Two considerations have weighed with the courts in justifying departure from the principle of merit-based selection, viz.

firstly, the claim of State interest in providing adequate medical service to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors, and secondly, the region's claim of backwardness. Their Lordships held that though the policy of ensuring admissions to the MBBS course on all-India basis is a highly desirable policy, but it may not be realistically possible, in the present circumstances, to adopt it, for, it cannot produce real equality of opportunity unless there is complete absence of disparities and inequalities. A reference to paragraph 8 in the context of the concept of domicile and paragraph 12 in the context of "selection for admission to medical colleges must be based on merits" is significant which read thus:-

> "***8.*** *Now it is clear on a reading of the Constitution that it recognises only one domicile, namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India". Moreover, it must be remembered that India is not a federal state in the traditional sense of that term. It is not a compact of sovereign states which have come together to form a federation by ceding a part of their sovereignty to the federal state. It has undoubtedly certain federal features but it is still not a federal state and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system*

which prevails throughout the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country. It is true that with respect to subjects set out in List II of the Seventh Schedule to the Constitution, the States have the power to make laws and subject to the overriding power of Parliament, the States can also make laws with respect to subjects enumerated in List III of the Seventh Schedule to the Constitution, but the legal system under the rubric of which such laws are made by the States is a single legal system which may truly be described as the Indian legal system. It would be absurd to suggest that the legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India, merely because with respect to the subjects within their legislative competence, the States have power to make laws. The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one State or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. We think it highly detrimental to the concept of unity and integrity of India to think in terms of State domicile. It is true and there we agree with the argument advanced on behalf of the State Governments, that the word 'domicile' in the rules of some of the

State Governments prescribing domiciliary requirement for admission to medical colleges situate within their territories, is used not in its technical legal sense but in a popular sense as meaning residence and is intended to convey the idea of intention to reside permanently or indefinitely. That is, in fact, the sense in which the word 'domicile' was understood by a five-Judge Bench of this Court in D.P. Joshi case while construing a rule prescribing capitation fee for admission to a medical college in the State of Madhya Bharat and it was in the same sense that word 'domicile' was understood in Rule 3 of the Selection Rules made by the State of Mysore in N. Vasundara v. State of Mysore. We would also, therefore, interpret the word 'domicile' used in the rules regulating admissions to medical colleges framed by some of the States in the same loose sense of permanent residence and not in the technical sense in which it is used in private international law. But even so we wish to warn against the use of the word 'domicile' with reference to States forming part of the Union of India, because it is a word which is likely to conjure up the notion of an independent State and encourage in a subtle and insidious manner the dormant sovereign impulses of different regions. We think it is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept or idea for conveying a different concept or idea, it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning. The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. We would, therefore, strongly urge upon the

State Governments to exercise this wrong use of the expression 'domicile' from the rules regulating/admissions to their educational institutions and particularly medical/colleges and to desist from introducing and maintaining domicillary requirement as a condition of eligibility for such admissions.

12. *But let us understand what we mean when we say that selection for admission to medical colleges must be based on merit. What is merit which must govern the process of selection? It undoubtedly consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of the poor. We agree with Krishna Iyer, J. when he says in Jagdish Saran case: (SCC p. 778, para 21)*

> *If potential for rural service or aptitude for rendering medical attention among backward people is a criterion of merit and it, undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears - then, surely, belonging to a university catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases.*

Merit cannot be measured in terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head in assessing the social value of a member of the medical profession. This is also an aspect which may, to the, limited extent possible, be borne in mind while determining merit for selection of

candidates for admission to medical colleges though concededly it would not be easy to do so, since it is a factor which is extremely difficult to judge and not easily susceptible to evaluation."

21. In *Rajdeep Ghosh v/s. State of Assam & Ors. (supra)*, the Supreme Court held that it is permissible to lay down the essential educational requirements, residential/domicile in a particular State in respect of basic courses of MBBS/BDS/Ayurvedic. The Hon'ble Supreme Court observed that the object sought to be achieved is that the incumbent must serve the State concerned and for the emancipation for the educational standards of the people who are residing in a particular State. Such reservation has been upheld by the Supreme Court for the inhabitants of the State and prescription of the condition of obtaining education in a State.

22. This Court in *Yellamalli Venkatapriyanka v/s. State of Maharashtra, through its Department of Medical Education & Drugs Mantralaya & Anr. (supra)* held that though the petitioner was born in the State of Maharashtra, and was sent by her parents to pursue her class XIth and XIIth in the State of Kerala in that context observed that the local and regional requirements can also be taken into consideration to weed out candidates, who are not in continuous residence within the State of Maharashtra for fifteen years preceding the qualifying examination. It was therefore held that these Rules are, not violative of the mandate of Article 14 of the Constitution of India. It needs to be noticed that the decision of

this Court in *Rajiv Purshottam Wadhwa v/s. State of Maharashtra, through its Department of Medical Education and Drugs & Ors. (supra)* was distinguished on the ground that the observations relied upon cannot be read in isolation and de hors the background facts. The decision in ***Y**ellamalli Venkatapriyanka v/s. State of Maharashtra, through its Department of Medical Education & Drugs Mantralaya & Anr. (supra)* is distinguishable on facts. Thus, though the validity of the Rules was upheld, it is in the facts of each case that the application of the Rules will have to be tested when there is no challenge to the Rules.

23. Now let us refer to the decision in *Rajiv Purshottam Wadhwa v/s. State of Maharashtra, through its Department of Medical Education and Drugs & Ors. (supra)* in some details. Paragraphs 2 and 3 provide for the conspectus of the case. The same being relevant read thus:-

> "***2.*** *By this writ petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the Constitutional validity of Rule 4.4 of the rules framed by the Maharashtra University of Health Sciences governing admissions to courses in Health Sciences in the State. Rule 4.4, which is the subject-matter of controversy provides that a candidate seeking admission to courses in Health Sciences for academic year 2000-2001 would be eligible for admission only if he or she has passed the S.S.C. Examination from an institution situated in the State of Maharashtra. Rule 4.5 similarly requires as a condition of eligibility that every candidate must have passed the Higher Secondary Certificate or equivalent examination*

from an institution situated in the State of Maharashtra. The petitioner, seeks to impugn the validity of Rule 4.4 and it is with this challenge that the petition is concerned. At the outset, it must be clarified that Rule 4.5 which requires the passing of the H.S.C. examination or an equivalent examination is not under consideration. The H.S.C. examination is the qualifying examination for admission to medical courses and the passing of that examination from the State of Maharashtra is thus a valid requirement of eligibility. Briefly put, the case of the petitioner is thus:

***3.** The father as well as the mother of the petitioner were born in Maharashtra. After completing S.S.C. in 1983 from the Pune Board the petitioner's father joined the defence services as a radar operator in the Indian Air Force. The petitioner's father served in the Air Force until 26th June, 1979 when he retired. Upon retirement from the Air Force the petitioner's father took up employment at the Airport at Dubai. The petitioner was born on 26th September, 1982 and completed his education until 10th Standard in Dubai. In March, 1998 the petitioner passed the 10th Standard Examination held in Dubai and conducted by the Central Board of Secondary Education, New Delhi. The petitioner sought and obtained admission to the 11th Standard Course at Kirti College, Dadar, Mumbai. The petitioner passed the 11th Standard in May, 1999 after which he was admitted to the Higher Secondary course in the 12th Standard.*"

24. As regards the interpretation of Rule 4.4, Their Lordships held thus:-

"*22. The problems which the present writ petition and the connected writ petitions raise is as to whether the requirement of having passed*

the 10th examination from within the State can operate to debar a student who even otherwise is domiciled within the State or can be regarded as a permanent resident of the State. In other words, the issue before the Court is whether a candidate who otherwise fulfils the requirement of residence or domicile within the State can be excluded from admission solely on the ground that he or she has not passed the 10th Standard Examination from within the State. The requirement of passing of the H.S.C. or 12th Standard Examination stands on a different footing since that is the qualifying examination for admission to medical courses. We are, therefore, concerned only with Rule 4.4 which requires the passing of the Xth Standard or S.S.C. Examination from an institution within the State.

23. In dealing with this question it is necessary to emphasise that the basic principle on the basis of which admissions to Medical Courses have to be made is the principle of merit. A departure from the principle of merit has been held to be justifiable in specific circumstances, which have been adverted to in the judgment of the Supreme Court in Dr. Pradeep Jain's case (supra). The object of Rule 4.4 in the Rules for admission in the present case is to ensure that claims for admission to medical courses within the State by students residing within the State or domiciled within the State should be duly protected. Rule 4.4 undoubtedly constitutes a departure from the principle of merit because it excludes candidates from outside the State who may have a higher percentage of marks for seeking admission within the State because they have not passed the 10th Standard Examination from within the State. This departure from merit must be justifiable. As already stated earlier, apart from protective discrimination for the reserved categories, the Supreme Court has laid down two considerations for justifying a departure

namely (1) the State interest particularly in ensuring medical facilities to residents of the State; and (2) the claim of Regions within the State which are considered to be backward. Rule 4.4. can be regarded as constitutionally valid if it falls within the parameters of those considerations which have been held by the Supreme Court to justify a departure from merit. The Rule or requirement whereby students should have passed the 10th Standard Examination from an institutions within the concerned State is to ensure that students must be resident in or domiciled in the State and that will protect the State's interest in Medical education. The object of Rule 4.4. is to ensure that a certain proportion of seats-85% of the total number of seats will be made available to students from within the State and that such students should fulfil the requirement of who do not fulfil the requirement of domicile or residence from gaining admission to medical courses within the State.

24. In our view, therefore, the Rules for Admission which have been framed by the State must suitably interpreted and read down so as to ensure that while Rule 4.4. and Rule 4.5 would continue to operate, it should be open to the State Government to consider for admission those students who fulfil the requirements of domicile or residence prescribed by the State Government but who may not have passed the 10th Standard Examination from within the State. The basic object and purpose of Rule 4.4 is to implement the requirement of domicile or residence. That objective is sought to be achieved by not conferring eligibility for admission on students who have not passed the 10th Standard Examination from institutions within the State. That objective however would be defeated by excluding from the admissions process students who are bona fide residents of the State and are domiciled therein merely on the ground that some of these

students may not have passed the 10th Standard Examinations from within the State. The object of the Rule must therefore be preserved by implementing it as it stands, subject to the proviso that it would be open to the State to consider as eligible those students who are bona fide permanent residents of the State or are domiciled there even though in a given case the student may not have passed the 10th Standard Examination from the State. Reading down of Rule 4.4 in this manner is not only desirable in the interests of justice but is necessary in order to preserve the constitutional validity of Rule 4.4. Otherwise, the rule may be susceptible to a substantial constitutional challenge on the ground that the prescription of the condition of passing the 10th Standard Examination arbitrarily excludes students who are bona fide permanent residents of or are domiciled in the State, merely by the fortuitous circumstances that the S.S.C. Examination has not been passed from an institution within the State.

25. The principle of reading down the rule would, in our view, be desirable from another point of view as well. The petitioner has approached this Court for striking down Rule 4.4. The striking down of Rule 4.4 would not readily serve the interests of students resident in the State because the consequence of a striking down of the Rule would be to enable all students who stay wherever within the country from seeking admission to Medical courses within the State. This obviously is a consequence which even the petitioner and the State itself would not countenance.

26. The question as to whether a rule providing for admissions to Medical Colleges can be read down in such a context has been considered in a recent judgment of the Supreme Court in the case of

(Ahmedabad Municipal Corporation v. Nilaybhai R. Thakore), (1999) 8 SCC 139. In the case before the Supreme Court Rules 6 and 7 of the N.H.L. Municipal Medical College Admission Rules, which govern admissions to the Municipal Medical College prevented students who are residents of Ahmedabad city but who have acquired their qualifications for admission from educational institutions situated within the Ahmedabad Urban Development Area from being treated as local students. The High Court of Gujarat struck down the Rule holding that the best candidates for admission to the Medical College. The High Court came to the conclusion that the classification based on attending a college within and outside the corporation limits was not a reasonable classification for the purpose of admission to the Medical College. Rule 7 of the rules was in issue before the Supreme Court. The rule defined the "Local Student" as a student who had passed the S.S.C./new S.S.C. Examination and the qualifying examination from any of the High Schools or Colleges, situated within the Ahmedabad municipal Corporation Limits. Consequently permanent resident students of Ahmedabad City who had for fortuitous reasons happened to acquire qualifications from educational institutions situated outside the Municipal limits would not be eligible for being treated as local students. The Supreme Court was of the view that the Rules as framed did not meet the requirement of reasonableness and non discriminatory treatment. The Court dealt with the issue in the following terms:

> *"The object of the Rule is to provide medical education to the students of Ahmedabad who have acquired the necessary qualification, their selection being based on merit. If that be the object, can it be said that a classification based only on the local of the educational institution within or outside the*

> *Municipal limits is a reasonable classification? In our opinion, the answer should be in the negative. In the counter-affidavit filed on behalf of the Ahmedabad Municipality in the writ petition, it is stated that the Medical College in question was established to cater to the needs of the students of Ahmedabad city. If that be the object, in our opinion, the same would be defeated by restricting the definition of "local student" to those students who have acquired their qualification from institutions situated within the Ahmedabad Municipal area, because as has happened in this case, the actual resident students of the Municipality whose parents would have contributed towards the revenue of the Ahmedabad Municipality who for reasons beyond their control or otherwise, had acquired their qualification from institutions situated just outside the Ahmedabad municipal area i.e. within AUDA, would be denied the benefit of admission to the college which is run by the Ahmedabad Municipality. In our opinion, confining the definition of "local students" to only those students who acquired the qualification from educational institutions situated within the local area creates an artificial distinction from amongst the students who are residents of Ahmedabad city but who have studied in educational institutions situated outside the Ahmedabad Municipal Corporation limits. We do not find any nexus in this type of classification with the object to be achieved."*

27. Having held that Rule 6 suffered from an element of arbitrariness the Supreme Court held that the remedy would not lie in striking down the impugned rules, the existence of which was necessary in the larger interest of the institution as well as of the populace residing

within the limits of Ahmedabad Municipal Corporation. The Supreme Court noted that the striking down of the rule would result in a situation where candidates from all over the country would seek admission to the Municipal Medical College and that this would defeat the purpose of prescribing the requirement of residence. Hon'ble Mr. Justice Santosh Hegde speaking for the Supreme Court held thus:

> *"The striking down of the Rule would mean opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be opposed to the very object of the establishment of the institution by a local body. It is very rarely that a local body considers it as its duty to provide higher and professional education. In this case the Municipality of Ahmedabad should be complimented for providing medical education to its resident students for the last 30 years or more. It has complied with its constitutional obligation by providing 15% of the seats available to all-India merit students. Its desire to provide as many seats as possible to its students is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Therefore, with a view to protect the laudable object of the Municipality, we deem it necessary to give the impugned rule a reasonable and practical interpretation and uphold its validity."*

28. In that view of the matter, the Supreme Court held that since the rule in question was a place of subordinate legislation and having regard to the fact that by declaring the rule ultra vires as was done by the High Court considerable damage would result to the cause for

which the Municipality had enacted this rule, the Supreme Court has interpreted Rule 7. As interpreted by the Supreme Court, Rule 7 would mean the following:

> *"Local student means a student who had passed H.S.C. (sic/S.S.C.)/New S.S.C. Examination and the qualifying examination from any of the High Schools or colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who acquires the above qualifications from any of the high schools or colleges situated within the Ahmedabad Urban Development Area."*

29. As a result of the interpretation of Rule 7 by the Supreme Court the benefit of seeking admission to the Ahmedabad Municipal Medical College in Ahmedabad was extended to (i) students who had passed the S.S.C./new S.S.C. Examination from High Schools or colleges situated within the limits of the Municipal Corporation and also (ii) permanent resident students of the Municipality who had acquired qualifications from High Schools or colleges situated in the urban development area.

30. The approach adopted by the Supreme Court is one which we would respectfully follow in the facts and circumstances of the present case. As stated by us earlier, the object of providing that a student in order to be eligible ought to have passed the S.S.C. Examination from an institution within the State is to make available the benefit of medical education to permanent residents of the State. That object would be defeated if the rules were struck down for then, students from all over the country would be entitled to admissions to medical colleges in the State, over and above the 15 percent quota

available on an all India basis. Instead, the alternative approach which according to us will be, in the interests of justice is that Rule 4.4 should be interpreted and read to mean that (i) in order to be eligible for admission students must have passed the S.S.C. or an equivalent examination from an institution within the State of Maharashtra, (ii) However, the State Government can consider for the grant of admission to students who are domiciled in or are permanent residents of the State of Maharashtra, but who due to fortuitous circumstances may not have passed the 10th Standard Examination from within the State. We make it clear that it would be entirely a matter for the State Government to determine as to when or on the basis of what considerations a student can be regarded as a permanent from an institution located within the State shall be considered in accordance with the guidelines and or Rules to be framed by Government.

31. Before concluding, we may briefly deal with two submissions which have been urged by the petitioners. The first of these submissions is that the Rules constitute an unconstitutional discrimination between students whose parents are employed in the service of the Central Government or State Government on one hand and students whose parents are employed in a private establishment on the other hand. Having given our anxious consideration to this submission, we do not find any substance therein. There is a real and an intelligible differentia between employment in the State or Central Government on the one hand and employment in the private sector on the other hand. Employment in Government service, it is well settled, is generally speaking not a matter purely of contract and there is an element of compulsion involved for an employee of the State or Central

Government to serve in any part of the country that he may be deputed to serve. That element of compulsion may not wholly be absent in the case of private employment. However there is a distinction between service in the State and private service and even if it is one of degree it is sufficient in our view to sustain the constitutional validity of the Rule. We are aware of the view which was taken by the two Division Benches of this courts which have upheld the exemption granted to children of employees of the Central Government, State Government and Government Undertakings. We also do not find any substance in the plea of promissory estoppel which it might be fairly stated was only faintly argued before us by the learned Counsel appearing for the petitioner. Students who apply for admission are, subject to observance of constitutional requirements, bound by the rules of admission and we do not consider that the doctrine of Promissory estoppel would be apposite in this context."

25. The decision in *Rajiv Purshottam Wadhwa v/s. State of Maharashtra (supra)* was relied upon in ***Priya Kedar Gokhale v/s. State of Maharashtra – 2022 SCC OnLine Bom 11645***. The petitioners assailed eligibility criteria in the notification issued by the respondents to the extent that the same treated the petitioners as outside Maharashtra candidates for admission to the MAH-CET Examination for the 5 years integrated LLB Course. The Petitioners had sought directions that they may be treated as within the State candidates in category-A of the Notification. Their Lordships in paragraphs 22 to 25 observed thus:-

"*22. Perusal of the said Rules, it is manifest that the prima donna consideration for applying from the Maharashtra State quota is that the candidate should have passed 10th and 12th standard examination from the institution located within the State of Maharashtra. If the candidate has not passed his 10th and 12th standard from the State of Maharashtra then though the candidate or his parents are domiciled in the State of Maharashtra and/or candidate is born in Maharashtra, he is not to be considered from the State quota. The said Rule would undermine the domicile based reservation. The Maharashtra State Candidature Type-A is meant for the candidate who is domiciled in Maharashtra or born in Maharashtra. However, further condition of passing 10th and 12th standard examination from the institution within the State of Maharashtra would debar a candidate who is domiciled or born in Maharashtra from taking admission even if because of the fortuitous circumstances he could not take education in 10th and 12th standard from the State of Maharashtra. The present case would be an illustration of the same. The parents of the Petitioners are born in Maharashtra, they are permanent residents of Maharashtra, they have immovable property situated at Pune, State of Maharashtra, the Petitioners are born in Maharashtra, however, because the father of the Petitioners is in service of the nation viz. Officer in Army, is deployed throughout the country and as observed above was deployed after the birth of the Petitioners, at various States. The Petitioners could not complete 10th and 12th standard from the State of Maharashtra. At the time the Petitioners took admission in 10th standard the father of the Petitioners was posted in Delhi and immediately, it appears, he was transferred to the eastern region of the country and in that circumstance, the Petitioners had to*

complete their 10th and 12th standard from Delhi. When the Petitioners were in 4th and 5th standard, the father of the Petitioners was posted in Pune, Maharashtra and they took education in 4th and 5th standard from Pune, Maharashtra. The Rule, in itself may not be ultra vires. Some standards will have to be set for a domicile based reservation. The condition that candidate passing 10th and 12th standard from State of Maharashtra may not be unreasonable or arbitrary. However, further distinction or exception will have to be made. There may be cases where the candidate/student does not have a choice, such as the rigours service conditions of the parents by virtue of which they are posted throughout the country in the service of the nation and; other, who voluntarily for their business or any other purposes, go to other State. In the former, it would be an involuntary and compelling circumstances, whereas in latter, it would be a voluntary act. The State ought to consider the cases of the candidates who are domiciled in Maharashtra or born in Maharashtra but because of the fortuitous circumstances, such as the service conditions of the parents who are in service of the nation are required to be deployed outside the State. In such cases, relaxation can be provided by the State Government to such candidates of non completing SSC and HSC from the State of Maharashtra. If such exception or relaxation is not provided, the same would be harsh and would be disentitling the candidates domiciled in Maharashtra or born in Maharashtra from taking benefit of Maharashtra State quota. On the other hand, even if the candidate or the parents are not domicile of Maharashtra nor born in Maharashtra but are employees of the Government of India and have joined the duty in Maharashtra State just before filling in form of CAP round and the candidate

appears in SSC and HSC examination from the State of Maharashtra would be eligible for admission from the Maharashtra State quota.

23. 19 The benefit of Maharashtra State quota is extended (by an exception) to the candidates whose father or mother is in Government of India service and is transferred just prior to filling in the CAP round by the candidate and the candidate who has done only his 10th and 12th standard from the State of Maharashtra would be eligible to be considered for the Maharashtra State though not domiciled in Maharashtra and the candidates who are born in Maharashtra or whose parents are born in Maharashtra and domiciled in Maharashtra and are Government of India employee but because of their posting outside the State of Maharashtra, the candidate could not study his 10th and 12th standard from State of Maharashtra is precluded from taking admission from the Maharashtra State quota. The same would be unreasonable. Basically, the Maharashtra State quota is to be provided for the persons domiciled, born in the State of Maharashtra. The factual matrix in case of Meenakshi Malik (supra) decided by the apex court and in case of Archana Sudhakar Mandulkar (supra) are similar to the facts of the present case.

24. In case of Rachana Sanjay Kuwar v. State of Maharashtra the Division Bench of this Court to which one of us (S.V. Gangapurwala, J.) was a party, had not permitted the candidate to be considered from Maharashtra State quota. In the said case, the candidate had immovable property at Shahada. The father of the Petitioner was scientist in the Department of Government of India. The Petitioner passed her SSC and HSC examination from Bhopal. The Petitioner therein sought admission from the Maharashtra State

quota. this Court denied the relief to the Petitioner therein as the Petitioner had not challenged the regulations and the rules of the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Administrator to the Full Time Professional Undergraduate Medical and Dental Course) 2016.

25. In the present case, the Rules are challenged. In view of the aforesaid discussion though we hold that Rules are not ultra vires, however, we may hasten to add that same needs to be read down to provide relaxation or exemption for those candidates who are born in Maharashtra and whose parents are domicile of Maharashtra but due to fortuitous circumstances such as the parent is in service of the Government and serving the nation and due to service condition is deployed in various parts of the country could not complete their SSC or HSC from State of Maharashtra."

26. We place heavy reliance on the observations of this Court in *Rajiv Purshottam Wadhwa v/s. State of Maharashtra, through its Department of Medical Education and Drugs & Ors. (supra)* and *Priya Kedar Gokhale V/s. State of Maharashtra (supra)* in support of the view we take. In the present case, the contention of the petitioner is that by a combined reading of the eligibility criterion for candidates under Category I General and the residential requirement stated in Category I to VI and Category VII, the same do not exclude a candidate who is otherwise a permanent resident of Goa, but due to some special or fortuitous circumstance does not possess continuous residence in the State of Goa.

27. The State contends that the prospectus being executive instructions under Article 162 of the Constitution of India, has the force of law and is required to be applied strictly to reflect the intention of the Government; the State contends that the prospectus, if read plainly would exclude all categories of candidates who do not possess continuous 10 years of physical residence in the State of Goa by physically attending a school, including the 12th Standard within the State of Goa. In other words, the State contends that the prospectus intentionally excludes all candidates who do not possess continuous physical residence for a period of 10 years immediately preceding the admission to the course.

28. The intention of the specific rules of residence in the prospectus are two-fold; the first is to select the most meritorious candidates, and the second is to create protective discrimination or an affirmative action in favour of candidates who are resident in the State of Goa. The rule of residence for a period of not less than 10 years is in pursuance of the State Policy and on the principle that amongst the meritorious candidates, the State would like to ensure that medical facilities are made available to the population of the State by imparting medical education to the residents of the State who would settle down in that State.

29. The question before us therefore, is whether the Rules should operate in a manner as to debar a student who is a permanent resident of Goa,

from being eligible. The word permanent resident being akin to the concept of domicile, keeping in mind the intent and object behind the State Policy, would necessarily include persons born in Goa, whose parents ordinarily reside in Goa as permanent residents, with a permanent place of abode and at least one of those parents having permanent employment and means of sustenance within the State of Goa.

30. Merely because the candidate, due to the circumstance that one of the parent, in this case the mother, was temporarily residing outside Goa, with whom the petitioner, who was a young girl was forced to reside, the Rule cannot be read to exclude such a candidate, as such an interpretation itself would militate against the object of the Rule and of the policy, the object being keeping the principle of merit at the forefront, the candidate should otherwise have a permanent residence in the nature of domicile within that State.

31. The petitioner was born in Goa. The grandparents and father are permanent residents of Goa. Both parents including the petitioner are registered Aadhar Card and Voter's Card holders within the State of Goa and possess Ration Card of the State of Goa. These are circumstances pointing to the permanent residence status of the petitioner in Goa though she may have temporarily taken residence due to the fortuitous circumstance of her mother's employment outside Goa. Petitioner's

mother was employed with Nuclear Power Corporation of India Limited situated at Kaiga, a Government of India Enterprise, Department of Atomic Energy. Petitioner being a girl child resided with her mother in her official accommodation. She did her schooling in Kaiga though her father was permanently residing in the State of Goa being an employee of the Government of Goa. In our view, the Rule cannot be read in a manner that it becomes a barrier in a woman's right to employment, in the present case in a Central Government Undertaking, where she is required to take up a temporary residence away from her husband's place of permanent residence. Had the petitioner's mother quit the job, obviously the petitioner would have done her schooling in the State of Goa. This we can reasonably infer as she completed her XIth and XIIth Std. studies from the State of Goa while residing with her father. The operation of the Rule is not intended to be so drastic that it completely overlooks the compelling circumstance the petitioner and her mother are placed in, and, hence we feel, in the facts and circumstances of the present case, a meaningful interpretation has to be given to the Rule. In our opinion such an interpretation of the Rule will further the object of Clause 5 in advancing a woman's right to employment and that of a girl child being deprived of the love and affection of her mother at such a tender age. In such a situation, if she is taking education while residing with her mother, a literal reading of the Rule as the learned counsel for the respondents want us to, will

result in manifest injustice. Further, even the Rules provide that in respect of any employee of the Government of Goa sent on deputation outside the State of Goa, his child though may not have actually studied at a school from Goa will be regarded as a resident of Goa for the purpose of this Rule. We therefore have no hesitation in allowing Ms Anagha's Writ Petition.

32. Writ Petition No.2435/2024 (F) is allowed in terms of prayer clause (a) which reads thus:-

> "a) For an appropriate writ, order or direction thereby directing the respondent 3 to accept the admission form of the petitioner and to admit the petitioner for the first year professional degree course of M.B.B.S at the institution of Respondent no. 4."

33. Consequently the challenge raised in Writ Petition No.2460/2024 (F) fails and is accordingly dismissed.

34. Both the Writ Petitions are disposed of with no orders as to costs.

VALMIKI MENEZES, J. **M. S. KARNIK, J.**