

MARRI CHANDRA SHEKHAR RAO

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v.

DEAN, SETH G.S. MEDICAL COLLEGE AND ORS.

MAY 2, 1990

[SABYASACHI MUKHARJI, CJ., B.C. RAY, L.M. SHARMA,
P.B. SAWANT AND K. RAMASWAMY, JJ.]

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Constitution of India, 1950: Articles 341 and 342—Scheduled Castes and Scheduled Tribes—Reservation—Whether one who is recognised as Scheduled Tribe in the State of origin and birth continues to have the benefits or privileges or rights in the State of Migration? Interpretation of the expressions 'in relation to that State' and 'for the purposes of this Constitution'.

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Professional Colleges—Admission to—Maharashtra State Medical College—Admission to—Applicant belonging to Gouda Community Scheduled Tribe in Andhra Pradesh—Gouda Community not Scheduled Tribe in Maharashtra—Applicant not entitled to claim seat on the basis of reservation.

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The Petitioner was born in Tenali in the State of Andhra Pradesh and belonged to the Gouda Community which is claimed to have been recognised as 'Scheduled Tribe' under the Constitution. His father had been issued an Scheduled Tribe Certificate and it is on the basis of the quota reserved for Scheduled Tribes that he was appointed in the Fertilizer Corporation of India and later with the Rashtriya Chemical & Fertilizer, Ltd., and posted in Bombay since 19.6.1978. The Petitioner was also living with his father in Bombay since the age of nine years and took his education there upto 12th standard securing 165 marks in the aggregate, in Physics, Chemistry and Mathematics.

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For the academic year 1989-90 he applied for admission to the M.B.B.S. Course in three colleges run by the Bombay Municipal Corporation and one by the State of Maharashtra seeking the benefit of reservation in favour of the Scheduled Tribes. The Petitioner was not admitted to any of the colleges though some scheduled tribe candidates who had secured lesser marks than him were admitted. The reason for denial of admission to him was that he was not entitled to scheduled tribe Status of his origin and birth as Gouda was not recognised as Scheduled Tribe in Maharashtra State.

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Disposing of the Writ Petition filed by the Petitioner, this Court,

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HELD: Equality is the dictate of our Constitution. Article 14 ensures equality in its fullness to all our citizens. State is enjoined not to deny to any person equality before law and equal protection of the law within the territory of India. Where, it is necessary, however, for the purpose of bringing about real equality of opportunity between those who are unequals, certain reservations are necessary and these should be ensured. Equality under the Constitution is a dynamic concept which must cover every process of equalisation. 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 the presence of abilities. Dejure equality must ultimately find its *raison d'être* in *de facto* equality. [848E-G]

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Balancing must be done as between those who need protection and those who need no protection, i.e., those who belong to advantaged castes or tribes and those who do not. Treating the determination under Articles 341 and 342 to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4). [855C-D]

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Nothing is surplus in a Constitution and no part should be made nugatory. Having regard, however, to the purpose and the scheme of the Constitution which would be just and fair to the Scheduled Castes and Scheduled Tribes not only of one State of origin but other states also where the Scheduled Castes or Tribes migrate in consonance with the rights of other castes or community, rights would be harmoniously balanced. Reservations should and must be adopted to advance the prospects of weaker sections of society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the community. [858A-B]

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The petitioner is not entitled to be admitted to the Medical Colleges in Maharashtra on the basis that he belonged to the scheduled tribe in Andhra Pradesh. The question of petitioner's right to be admitted as being domicile does not fall for consideration. [860E]

M.C.S. RAO v. G.S. MEDICAL COLLEGE [MUKHARJI, CJ.] 845

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 989 of 1989.
(Under Article 32 of the Constitution of India).

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Raju Ramachandran, Mrs. Sadhna Ramachandran and Ravinder Bhatt for the Petitioner.

Soli J. Sorabjee, Attorney General, S.K. Dholakia, R.P. Bhatt, A.S. Bobde, V.A. Gangal, A.S. Bhasme, Ms. A. Subhashini, V.N. Ganpule and S. Sukumaran for the Respondents.

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The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, CJ. The issues involved in this writ petition under Article 32 of the Constitution are of seminal importance for the country and the people. The principles which should be applicable in governing the problem are indisputable. Their application, however, presents certain amount of anxiety.

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The petitioner, a citizen of India, was born on 6th October, 1969 in Tenali in the State of Andhra Pradesh. He belongs to the Gouda community also known as "Goudu", it is stated in the petition. This community is recognised as 'scheduled tribe' in the Constitution (Scheduled Tribes) Order, 1950, as amended upto date. We are not concerned with the correctness or otherwise of the factual position on this aspect in this application. The father of the petitioner had been issued a Scheduled Tribe Certificate by the Tasildar, Tenali, Andhra Pradesh on 3rd August, 1977. On the basis of the said certificate, the father of the petitioner was appointed in the Fertilizer Corporation of India, a public sector undertaking, on 17th October, 1977 in the Scheduled Tribes quota. On the 19th June, 1978, the petitioner's father joined the Rashtriya Chemicals and Fertilizers Ltd., a Government of India undertaking, under the quota reserved for Scheduled Tribes and he has been stationed in Bombay since then. The petitioner, therefore, came to live in Bombay, in the state of Maharashtra, since the age of nine years. The petitioner completed his secondary and higher education in Bombay. In March, 1989, the petitioner passed the 12th standard examination of the Maharashtra State Board of Secondary and Higher Secondary Examination, Bombay Divisional Board, securing 165 marks in the aggregate in Physics, Chemistry and Mathematics. For the academic year 1989-90, the petitioner submitted his application for three medical colleges in Bombay which are run by the Bombay Municipal Corporation (Respondent No. 2 herein) and for one medical college in Bombay run by the State of Maharashtra (respondent No. 3). The total number of

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- A seats in the three medical colleges run by the Municipal Corporation for the MBBS Course is 400 out of which 7% i.e. 28 seats were reserved for Scheduled Tribes. The total number of seats in the medical college run by the State of Maharashtra is 200 out of which 7% i.e. 14 seats are reserved for Scheduled Tribes. The petitioner sought and availed the benefit of the reservation in favour of the Scheduled Tribes. The petitioner was however not admitted to the MBBS course in either the medical colleges run by the Bombay Municipal Corporation or the State of Maharashtra, though indubitably Scheduled Tribes candidates who had secured lesser marks than him had been admitted. The undisputed reason for denial of admission to the petitioner was that the petitioner was not entitled to Scheduled Tribe status of his origin, in which this community is specified as a Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950.

There is a circular dated 22nd February, 1985 issued by the Government of India, Ministry of Home Affairs which, *inter alia*, states:

- D “It is also clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment etc. will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated.

- The admission forms issued by the Municipal Corporation as well as Government indicate the requirement of “domicile” of 15 years. The petitioner states that he has produced a domicile certificate indicating his stay in Maharashtra for over 10 years since 1978. This issue, however, is not before this Court in this writ petition. This issue had not been raised before this Court. In the counter-affidavit filed on behalf of the State of Maharashtra, the objection was on the interpretation of Article 342 of the Constitution and there was no contention raised on the question of domicile. It is, therefore, necessary to refer to Article 342. Article 342 of the Constitution reads as follows:

- H “342. Scheduled Tribes: (i) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities

which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

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(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

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In this connection, it may also be relevant to refer to Article 341 as it deals with the Scheduled Castes:

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"341. Scheduled Castes (1) The President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

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(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

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The question, therefore, that arises in this case, is whether the petitioner can claim the benefit of being a Scheduled Tribe in the State of Maharashtra though he had, as he states, a Scheduled Tribe certificate in the State of Andhra Pradesh? Inasmuch as we are not concerned in this application with the controversy as to whether the petitioner correctly or appropriately belongs to the Gouda community or not, or whether the petitioner had a proper certificate, it is desirable to confine the controversy to the basic question, namely, whether one who is recognised as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the state of migration or where he later goes.

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In this connection, the provisions of Articles 341 and 342 of the

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- A Constitution have been noticed. These articles enjoin that the President after consultation with the Governor where the States are concerned, by public notification, may specify the tribes or tribal communities or parts of or groups of tribes or tribal communities, which shall be deemed to be Scheduled Tribes in relation to that State under Article 341 and 342 Scheduled Tribes in relation to that State or Union Territory. The main question, therefore, is the specification by the President of the Scheduled Caste or Scheduled Tribes, as the case may be, for the State or Union Territory or part of the State. But this specification is 'for the purposes of this Constitution'. It is, therefore, necessary, as has been canvassed, to determine what the expression 'in relation to that state' in conjunction with 'for the purposes of this Constitution' seeks to convey.

- C Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(4), however, enjoins that nothing in that article or in clause (2) of Article 29 of the Constitution shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Therefore, reservation in favour of Scheduled Tribes or Scheduled Castes for the purpose of advancement of socially or educationally backward citizens to make them equal with other segments of community in educational or job facilities is the mandate of the Constitution. Equality is the dictate of our Constitution. Article 14 ensures equality in its fullness to all our citizens. State is enjoined not to deny to any person equality before law and equal protection of the law within the territory of India. Where, it is necessary, however, for the purpose of bringing about real equality of opportunity between those who are unequals, certain reservations are necessary and these should be ensured. Equality under the Constitution is a dynamic concept which must cover every process of equalisation. 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'être* 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 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. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating *de facto* inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. In this connection, reference may be made to the observations of this Court in *Pradeep Jain & Ors. v. Union of India & Ors.*, [1984] 3 SCC 654.

It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of under development to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from state to state and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country. This, however, is a different problem whether a member of the Scheduled Caste in one part of the country who migrates to another State or any other Union Territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole.

It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the

- A mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from inabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities.
- C This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult. For the purpose of understanding the problem, it may be worthwhile to refer to the Report of the Joint Committee of the Parliament on the Scheduled Castes and Scheduled Tribes (Amendment) Order Bill, 1967. It may also be worthwhile to refer to the proceedings of the Constituent Assembly on the 17th September, 1949 dealing with Articles 303 and 304, which later on became Articles 341 and 342 respectively. Dr. B.R. Ambedkar moving the Resolution observed as follows:

- E "That after article 300, the following articles be inserted:

300A.(1) The President may, after consultation with the Governor or Ruler of a State, by public notification specify the castes, races or tribes or parts of or groups within castes races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to the State.

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(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause (1) of this article any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

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300B.(1) The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for purposes of this

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Constitution be deemed to be scheduled tribes in relation to that State.

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(2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued by the President under clause (1) of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

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The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President."

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Our attention was also drawn to the views of Prof. K.T. Shah in the Constituent Assembly which are as follows:

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"That at the end of clause (2) of article 9, the following be added:—

'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment' "

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The clause, as it is, stands thus:

"Nothing in this article shall prevent the States from mak-

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A ing any special provision for women and children."

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

C The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

E In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.

H Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but

right and proper we should provide facilities so that they may be brought up-to-date so to say and the uniform progress of all be forwarded.

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I have, of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given. That may be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need, through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact. I trust this will commend itself to the House and the amendment will be accepted."

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It is, however, necessary to give proper meaning to the expressions 'for the purposes of this Constitution' and 'in relation to that State' appearing in Articles 341 and 342 of the Constitution. The High Court of Gujarat has taken the view in two decisions, namely, *Kum. Manju Singh v. The Dean, B.J. Medical College*, AIR 1986 Gujarat 175 and *Ghanshyam Kisan Borikar v. L.D. Engineering College*, AIR 1987 Gujarat 83 to which our attention was drawn, that the phrase 'for the purposes of this Constitution' cannot be and should not be made subservient to the phrase 'in relation to that State' and therefore, it was held in those two decisions that in consequence the classification made by one State placing a particular caste or tribe in the category of Scheduled Castes or Scheduled Tribes would entitle a member of that caste or tribe to all the benefits, privileges and protections under the Constitution of India. A similar view has been taken by the Karnataka High Court in the case of *M. Muni Reddy v. Karnataka Public Service Commission & Ors.*, [1981] Lab. I.C. 1345. On the other hand, the Orissa High Court in the case of *K. Appa Rao v. Director of Posts & Telegraphs, Orissa & Ors.*, AIR 1969 Orissa 220 and the full Bench of the Bombay High Court in *M.S. Malathi v. The Commissioner, Nagpur Division & Ors.*, AIR 1989 Bombay 138 have taken the view that in view of the expression 'in relation to that State' occurring in Articles 341 and 342, the benefit of the status of Scheduled Castes or Scheduled Tribes would be available only in the State in respect of which the Caste or Tribe is so specified. A similar view has been taken by the Punjab & Haryana High Court in the case of *V.B. Singh v. State of Punjab*, ILR 1976 1 Punjab & Haryana 769.

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It is trite knowledge that the statutory and constitutional provi-

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- A sions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well-settled. See the observations of this Court in *Sri Venkataramana Devaru & Ors. v. State of Mysore & Ors.*, [1958] SCR 895 at 918, where Venkatarama
- B Aiyar, J. reiterated that the rule of construction is well-settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Articles 341 as well as in Article 342 do imply that the Scheduled Castes and the
- C Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all—to scheduled castes or tribes and to non-scheduled castes or tribes. But when a
- D Scheduled Caste or tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated state it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by
- E migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used.
- F It was contended that the only way in which the fundamental rights of the petitioner under Article 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must
- G be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the
- H rights granted to Scheduled Castes or Scheduled Tribes are carried

forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Articles 341 read with Article 15(4) of the Constitution.

Our attention was drawn to certain observations in *Elizabeth Warburton v. James Loveland*, [1832] House of Lords 499. It is true that all provisions should be read harmoniously. It is also true that no provision should be so read as to make other provisions nugatory or restricted. But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression—"in relation to that state" or "for the purposes of this Constitution"—its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or a girl who migrates and gets deducted in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non-Scheduled Castes or non-Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the Constitution.

A In the case of *Pradeep Jain v. Union of India*, (supra), this Court held that a wholesale reservation of seats on the basis of residence requirement within the State or institutional preference would be violative of Article 14. Equally it is argued that a construction of Article 342 which completely prevents a Scheduled Tribe candidate of Andhra Pradesh from getting a medical seat in Maharashtra under the
B Schedule Tribe quota would be violative of Article 14. It would not be so, because a Scheduled Tribe candidate of Andhra Pradesh will be entitled to all the benefits in medical colleges of the State of Maharashtra. It was argued that under articles 19(1)(d), (e) and (f), if a parent wishes to keep his child with him, the opposite view would necessarily mean that he must remain confined to his home State, disregarding all suitable job opportunities commensurate with his
C education, experience and talent. We are unable to accept this submission. These are not additional protection, i.e., he can only enjoy the protection of the Scheduled Caste or Scheduled Tribe but he cannot enjoy the protection of non-Scheduled Tribes or Castes in addition to the existing fundamental rights.

D It is further submitted that the view canvassed on behalf of the petitioner finds support in Durga Das Basu's Commentary on the Constitution of India, 6th Edition, Vol. N—page 149, where it is stated as follows:

E “‘In relation to that State’. 1. A caste which is specified as a Scheduled Caste in a particular State may not deserve to be so specified in another State. But when a caste is specified in the President's Order in relation to a particular State, it does not mean that a person belonging to that caste should be considered to be the member of a S.C. only for that
F State alone. Once a caste is included in the Scheduled Castes Order, that would be for purposes of the Constitution.”

G It was submitted on the basis of the decision of this Court in *Pradeep Jain's* case (supra) that the residence requirement of 15 years in order to be eligible for admission to medical colleges in Maharashtra is wholly arbitrary, unreasonable and hence violative of Article 14 of the Constitution. Our attention was drawn to the decisions of this Court in *D.P. Joshi v. The State of Madhya Bharat & Anr.*, [1955] 1 SCR 1215 and *Minor P. Rajendra v. State of Madras & Ors.*, [1968] 2 SCR 786 on the question of residence qualification. In the view we have
H taken and in the context of the controversy in the instant case, we are

of the opinion that this question will not be relevant.

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We have heard learned Attorney General of India and he has drawn our attention to the policy followed by the Government of India for the Scheduled Castes and Scheduled Tribes. The policy seems to be as under:

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"I. Scheduled Castes and Scheduled Tribes are entitled to derive benefits of the All India Services or admissions in the educational institutions controlled/administered by the Central Government, irrespective of the State to which they belong. The reservation in force in favour of the Scheduled Castes and Scheduled Tribes in filling vacancies in posts and services under the Government of India are as in the enclosure (Chapter II of the Brochure on the Reservation for Scheduled Castes and Scheduled Tribes in Services issued by the Government of India). The reservations for Scheduled Castes and Scheduled Tribes in the All India Services are covered by these provisions and at present are 15% and 7.5% respectively. The Central Government/Government services include the All India Services i.e. the Indian Administrative Service, the Indian Police Service, the Forest Service, etc.

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II. The direct recruitment in respect of the All India Services is made on all India basis and the Scheduled Caste and Scheduled Tribe Candidates recruited at the indicated percentages of 15 and 7.5 respectively, are allotted to the States. The quota or the number of officers to be allotted to each State is decided in advance, taking into consideration the cadre gap and the impending retirement in the direct recruitment quota. For example, if a State has 12 direct vacancies, 22.5% of that would be 2.70. In that case, 2.70 would be rounded off to 3 and to that State cadre 3 officers belonging to the reserved category would be allotted."

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This, however, does not affect the present controversy. We also had the advantage of hearing the Advocate General of Maharashtra—Mr. A.S. Bobde. Mr. Raju Ramachandran learned advocate for the petitioner urged before us to take holistic view of the Constitution. Indeed, he is right that a holistic approach to the different provisions of the Constitution should be taken.

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- A Having regard, however, to the purpose and the scheme of the Constitution which would be just and fair to the Scheduled Castes and Scheduled Tribes, not only of one State of origin but other states also where the Scheduled Castes or tribes migrate in consonance with the rights of other castes or community, rights should be harmoniously balanced. Reservations should and must be adopted to advance the prospects of weaker sections of society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the community.

- C We have reached the aforesaid conclusion on the interpretation of the relevant provisions. In this connection, it may not be inappropriate to refer to the views of Dr. B.R. Ambedkar as to the prospects of the problem that might arise, who stated in the Constituent Assembly Debates in reply to the question which was raised by Mr. Jai Pal Singh ("Safeguards for Scheduled Caste and Tribes—Founding Father's view" by H.S. Saksena, at p. 60) which are to the following effect:

- D "He asked me another question and it was this. Supposing a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them"

- H In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe Certificate in Maharashtra. In the view we

have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration.

Having construed the provisions of Article 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those scheduled caste and scheduled tribe students who get the protection of being classed as scheduled caste or scheduled tribes in the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to other is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the scheduled castes or scheduled tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has so migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to scheduled castes and scheduled tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration.

Having so held, now the question is, as to what is to happen to the petitioner in this case. As we have held, the petitioner is not entitled to be admitted to the Medical College on the basis that he belongs to scheduled tribe in his original State. The petitioner has, however, been admitted. He has progressed in his studies. But he had given an undertaking that he will not insist on the basis of the admission. If we allow him to continue with his studies in Maharashtra's College where he has been admitted on the undertaking given after he has not succeeded in this application, it would be a bad precedent. We must, however, do justice. The boy's educational prospects should not be jeopardised since he has progressed to a certain extent and disqualifying him at this stage or this year on the ground that he is not entitled to the protection of Scheduled Caste or Scheduled Tribe, would not confer any commensurate benefit to scheduled castes or scheduled tribes in Maharashtra or for that matter on anybody else. It is, therefore, desirable that the question whether he is genuinely

- A belonging to Gouda community and whether this community is a scheduled caste or scheduled tribe, should be first properly and appropriately determined. As mentioned hereinbefore, we have not examined this question. After determining that whether after making provisions for the scheduled castes and scheduled tribes of Maharashtra, if any facility of admission or continuance of study can be given in the Medical College in Maharashtra to the petitioner herein, the authorities incharge of the Institution should consider the same and if on that considering they find it justified in allowing the petitioner to continue in his studies, they may do so. The authorities should consider the same and take action accordingly, as expeditiously as possible. In considering the question of the petitioner continuing his medical education, the appropriate authorities should bear in mind the justice of the situation. We, therefore, leave it to the authorities to take appropriate action about the continuance or discontinuance of the petitioner in his studies on the basis of the aforesaid consideration. We order accordingly. We do so only in the background of the peculiar facts and circumstances of this case. and the aforesaid observations should not be treated as a precedent for other situations.
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E We, therefore, direct that the petitioner is not entitled to be admitted to the Medical College on the basis that he belonged to the scheduled tribes in Andhra Pradesh but his continuance in the College will depend upon the consideration indicated hereinbefore. The writ petition is thus disposed of. There will be no order as to costs.

R.N.J.

Petition disposed of.