D. N. Chanchala

Vs

The State of Mysore and Others

And

Usha P. Bhaskar

Vs

The State of Mysore and Others

And

Ramasubramanyam Setty V.

Vs

The State of Mysore and Others

And

V. Soudamini

Vs

The State of Mysore and Others

Writ Petitions Nos. 618 to 622 of 1971

(J. M. Shelat, A. N. Grover, I. D. Dua JJ)

03.05.1971

JUDGMENT

SHELAT, J. –

1. These five petitions have been filed by candidates who failed to be selected for admission in Government Medical colleges in the State of Mysore and challenge the validity of the Selection Rules framed by the Government. Since their raise common questions, it is expedient to deal with them together and dispose them of by a common judgment. Writ petition No. 619 of 1970, we were told counsel, is the most comprehensive of them all and therefore we shall deal with it first and as typical of the rest. As the rest of the petitions raise the same question, it is not necessary to deal with each of them separately. Writ petitions Nos. 621 and 622, however, raise certain additional questions which will be dealt with to that extent separately.

#Writ Petition No. 619 of 1970##

2. The petitioner in this writ petition passed the Secondary School Leaving examination in March 1965, obtaining first class marks. In March 1969, she passed the Pre-University Course Examination held by the Bangalore University securing 67% marks in optional subjects, namely, Physics, Chemistry and Biology, and 71% marks in the aggregate. Her father having retired at Dharwar, she prosecuted her further studies for B.Sc. Part I examination in the Karnatak Science College, Dharwar, a college affiliated to the Karnatak University. She passed the B.Sc. Part I examination held by the University securing once again a first class.

3. Under Ordinance 144(c) of the Karnatak University, a student having passed the B.Sc. Part I examination with Physics, Chemistry and Biology as his optional subjects would be eligible for admission to a medical course provided he has obtained the minimum marks prescribed for admission to that course from time to time. The petitioner having obtained first class marks in the B.Sc. Part I examination was, therefore, eligible for admission to the medical course in the medical colleges affiliated to that University.

4. There are three universities in Mysore State, namely, Karnatak, Mysore and Bangalore Universities. All the three universities held pre-university course examination, the passing of which makes a student eligible for admission to courses leading to university degree. But, whereas the Karnatak University requires the passing of B.Sc. Part I examination leading to M.B.B.S. as the minimum qualification for being eligible for medical course, the other two universities require the passing of what is called the Pre-Professional examination, which is equivalent to B.Sc. Part I leading to M.B.B.S. degree of the Karnatak University.

5. The State of Mysore conducts four medical colleges : the Government Medical College at Mysore, which is affiliated to the Mysore University, the Government Medical College at Bangalore, which is affiliated to the Bangalore University, and the Karnatak Medical College at Hubli and the Government Medical College at Bellary, which are affiliated to the Karnatak. All the four medical colleges together have 765 seats in the aggregate. Besides these four institutions, there are also private managed medical colleges at Manipal, Davangere, Belgaum and Gulbarga with 120 seats in each of them, admission upon 10% therein being under the control of the Government.

6. The State Government has framed rules, called the Mysore Medical Colleges (Selection for Admission) Rules, 1970 regulating admission to Government medical colleges and for a certain number of seats specified therein in each of the said private medical colleges. Under these rules, the selection for admission to the Government medical colleges as also for the seats under the control of the Government in other colleges in entrusted to a selection committee constituted by the Government.

7. In accordance with the said rules, the petitioner applied to the selection committee for admission to any one of the medical colleges affiliated to the Karnatak University. She was, however, not selected. For appreciating the reasons why the committee could not select her, one has first to examine the said rules framed by the Government.

8. These rules are Annexure '3' to the writ petition. Under Rule 1(2), these rules are to apply for selection for admission to the Pre-Professional B.Sc. Part I Course leading to M.B.B.S. in the said Government medical colleges and to 59 seats in the aggregate in the four private medical colleges mentioned therein. The expression "the Pre-Professional/B.Sc. Part I course lading to M.B.B.S." has been used in sub-rule (2) of Rule 1 to mean Pre-professional course in Bangalore and Mysore Universities, and B.Sc. part I course leading to M.B.B.S. in the Karnatak University. The scheme

under the rule is that on passing the Pre-University Course examination of pupil becomes eligible to apply for admission to the Pre-professional Course in Bangalore and Mysore Universities and to the B.Sc. Part I Course leading to M.B.B.S. in the Karnatak University, the common qualification for eligibility to both the said courses in the three universities being the passing of the P.U.C. examination. Rule 2 prescribes the qualification for eligibility. Under this rule the candidate must have passed the P.U.C. examination or the XI standard of the Higher Secondary Schools examination of any university established by law in India or of any institution recognized by the State Government, or an equivalent examination with (i) Physics, Chemistry and Biology, or (ii) Chemistry, Botany and Zoology as optional subjects, or, as provided by clause (b), who is a graduate of any university with (i) Physics, Chemistry and Biology, or (ii) Chemistry, Botany and Zoology as optional subjects. Such a candidate must have obtained specified percentage of marks and must be within the age-limit prescribed by the tree universities. Under Rule 2, therefore, there are two categories of candidates who only are eligible for Selection : (1) those who have passed the P.U.C. examination or an equivalent examination, and (2) those who are graduates, having graduated with the optional subjects specified therein. The petitioner, not being a graduate, fell under the first category of candidates eligible for selection.

9. Rule 2(2) provides that out of the available number of seats after, deducting the number of seats set apart under rule 4, 80% of the seats shall be open for those who have passed the P.U.C. examination and 20% for those who are graduates. Rule 4 sets apart in all 60 seats for different categories of persons, namely, students from Union territories and States where there are no medical colleges, students from relatively less developed commonwealth countries, cultural scholars and students under T.C.S. of the Colombo Plan and special Commonwealth Assistance Plan, students from Nepal, repatriates from Burma, Ceylon, Mozambique, children of Defence personnel and Ex-Defence Personnel, students who have passed L.A.M.S. and L.U.M.S., lady students taking family planning programme, children of political sufferers, and lastly, students from Goa. Rule 5 provides that out of the number of seats available for allotment, after deducing the number of seats set apart under Rule 4, 15% shall be reserved for persons belonging to the Scheduled Casts, 3% shall be reserved for persons belonging to the Scheduled Tribes and 30% shall be reserved for persons belonging to socially and educationally backward class. Rule 7(1) provides for the constitution of the Selection Committee, and clause (2) thereof entrusts to the committee the duty to select candidates possessing the requisite qualification for admission to the said Pre-Professional/B.Sc. Part I Course leading to M.B.B.S. Rule 9 deals with distribution of seats among the several colleges. Clause (1) thereof provides that seats in the general pool shall be distributed university-wise, that is, seats in colleges affiliated to the Karnatak University shall be allotted to persons passing from colleges affiliated to that university, and seats in colleges affiliated to Bangalore and Mysore Universities shall respectively be allotted to persons passing from colleges affiliated to each such university, provided that not more than 20% of the seats in the colleges affiliated to any university may, in the discretion of the selection committee, be allotted to students passing from colleges affiliated to any other university in the state or elsewhere in India. The rest of the rules do not affect the petitioner's case, therefore, need not be cited.

10. Briefly, the effect of these rules is that the qualification for selection to the Pre-Professional Course, as it is known in Mysore and Bangalore Universities, or B.Sc. Part I Course leading to M.B.B.S. in the Karnatak University, is that the candidate has either passed the P.U.C. examination, or is a graduate having had the aforesaid optional subjects. The selection is to be made by the selection committee under Rule 7(2) for admission to the Pre-professional/B.Sc. Part I leading to M.B.B.S. A student getting admission to the aforesaid course had thus to pass the Pre-Professional examination held by the Mysore and Bangalore Universities, or B.Sc. part I leading to M.B.B.S.

examination held by the Karnatak University. It is only after passing the examination that a candidate can prosecute the regular M.B.B.S. course. The common qualification for being selected for the Pre-professional or B.Sc. Part I leading to M.B.B.S. degree being the passing of the P.U.C. examination or of being a graduate, passing of B.Sc. Part I examination by a student is irrelevant, as the marks counted for selection are those obtained by him either in P.U.C. examination or the B.Sc. examination. As already stated, Rule 2(2) sets apart up to 20% of the seats for those who are graduate i.e., those who have obtained B.Sc. degree. a student passing the P.U.C. examination or an examination equivalent to the examination can branch off either to (I) Pre-Professional/B.Sc. Part I leading to M.B.B.S., or (2) B.Sc. degree course. Under the rules no direct admission to M.B.B.S. course is possible because every student wishing to take up that course has first to be selected for the Pre-professional/B.Sc. Part I leading to M.B.B.S. course and pass the requisite examination in that course.

11. Though, for purpose of selection, marks obtained at the P.U.C. examination or at the B.Sc. examination only are taken into account and the passing of the B.Sc. Part I examination is for that purpose not relevant, there appears to be one advantage to a candidate who has passed B.Sc. Part I examination with the prescribed optional subject held by the Karnatak University. That advantage, as appearing from the additional affidavit filed by the petitioner's father and the correspondence between him and the University authorities, is that such a candidate, if selected, would be directly admitted to the M.B.B.S. degree course in the medical colleges affiliated to the Karnatak University. It is not necessary to say anything about what happens in the other universities since we are for the present not concerned with such a question.

12. The second effect of these rules is that if a student has passed the P.U.C. examination held by a particular university, such a student is, by virtue of Rule 9(1), eligible for admission in the medical college or colleges affiliated to that university. The selection committee, however, has the discretion to allot seats, up to 20% of the seats in the colleges affiliated to a university, to students passing from colleges affiliated to any other university in the State or even elsewhere in India.

13. Consequently, the petitioner having passed her P.U.C. examination from Bangalore University could apply for admission in a medical college affiliated to that university. If she were to apply for admission in a medical college affiliated to the Karnatak University she could only be selected to a seat from among seats up to the maximum of 20% of seats left in the discretion of the Selection Committee as provided by Rule 9(1). It is true that she had got 67% marks in optional subjects in the P.U.C. examination and students with lesser number of marks, but passing from colleges affiliated to the Karnatak University, got admission. But that was because she had passed the P.U.C. examination held by the Bangalore University and wanted admission in a medical college affiliated to another university, namely, the Karnatak University.

14. In view of this consequence, counsel for the petitioner made three submissions : (1) that once the petitioner was eligible for admission to a medical college affiliated to the Karnatak University according to the Ordinances of that university, the State Government could not make rules, the effect of which was to deprive her of admission; (2) that the university-wise distribution of seats provided under Rule 9(1) was discriminatory and being without any rational basis violated Article 14 of the Constitution; and (3) that reservation of seats under Rules 4 and 5 for the various categories of persons set out therein was far more excessive than permitted by the decisions of this Court and was in violation of Article 15(4). Consequently, Rules 4 and 5 laying down such reservation should be held invalid.

15. We propose to deal with those submissions in the order in which they were placed before us by counsel. As seen earlier, there are two sets of provisions dealing with the teaching of medical courses The first consists of Ordinances of the universities, and the second consists of the rules framed by the Government or selection of candidates for admission to the Pre-Professional B.Sc. Part I leading to M.B.B.S. degree. The Ordinances framed by the three universities are made under the different Universities Acts setting up those universities and under the powers reserved to them under them. These Ordinances are made for the purposes set out in those Acts and for carrying out those purposes. One of such purposes would be the maintenance of certain academic standards in the various faculties taught in the colleges affiliated to the universities. For the purposes of maintaining such standards the universities lay down certain minimum qualifications for eligibility for entrance in those faculties. These Ordinances and regulations made under the Acts lay down the minimum qualifications required for eligibility and are not to be confused with rules for admission. A candidate may have the minimum qualification so as to make him eligible for entrance in a particular faculty. That does not mean that his being eligible necessarily makes him entitled to admission in that faculty, for, admission can only be commensurate with the number of available seats in such a faculty.

16. The medical colleges in question are not university colleges but have been set up and are being maintained by the State Government from out of public funds. Since they are affiliated to one or the other of the three universities, the Government cannot frame rules or act inconsistent with the ordinances or the regulations of the universities laying down standards of eligibility. It is nobody's case that the Government has made rules which are in any way inconsistent with the rules for eligibility laid down in such ordinances and regulations.

17. Since the Government has set up these colleges and maintains them, it has prima facie the power to regulate admission in its own institution. Counsel for the petitioner pointed out to us no provision from the University Acts which deprives the Government of the power of making rules for admission in its own colleges. That being so, it cannot be said that the Government has no power to regulate admission in its own colleges or that because a student is eligible for admission under the University ordinance, he automatically gets a right to admission which he can enforce in a court of law.

18. The rules are limited to admission to the Pre-Professional/B.Sc. Part I Course leading to M.B.B.S. degree in the Government medical colleges and in respect of 59 seats in the aggregate in the medical colleges run by private management. The control for admission in respect of the 59 seats in the private colleges must have been acquired by the Government with the consent of or under some agreement with those colleges by reason of their getting financial and other aid from the Government. So long as the rules for selection applicable to the colleges run by the Government do not suffer from any constitutional or legal infirmity, they cannot be challenged as the Government can regulate admission to its own institutions. The objection that it cannot, by such rules, provide for requirements over and above those laid down by the universities for eligibility cannot be sustained. (See State of Andhra Pradesh v. Lavu Narendranath (1971 (1) SCC 607) wherein the earlier decisions on this subject have been examined and followed.)

19. The next contention was that Rule 9 (1), which prescribes university-wise distribution of seats results in discrimination for it lays down a classification which is neither based on any intelligible differential, nor has a rational nexus with the object of the rules. The argument was that although there is one selection committee for all the Government medical colleges in all the three universities and for the said 59 seats in private colleges, students passing from colleges affiliated to a particular

university are first admitted in Government medical colleges affiliated to that university and only seats up to 20% in each of such medical colleges can be allotted to outsiders in the discretion of the committee. The result is that a student having higher marks than the last admitted student is deprived of a seat only for the reasons that he had passed his P.U.C. examination from a college affiliated to another university. According to counsel, such a classification has no rational basis and has no reasonable nexus with and is in fact inconsistent with the very object of establishment of Government medical colleges, namely, to train in medicine the most meritorious amongst the candidates seeking admission.

20. In support of the contention counsel relied on Rajendran v. Madras ((1968) 2 SCR 786 : AIR 1968 SC 1012 : (1968) 2 SCJ 801) where Rule 8 of the Selection Rule framed by Madras Government was struck down on the ground of its being violative of Article 14. Rule 8 provided that the seats available in the general pool, as also those reserved for the socially and educationally backward classes would be allotted amongst various district on the basis of the ratio of the population of each district to the total population of the State. The contention was that distribution of seats district-wise would result in denial of better candidates from being selected and candidates of inferior calibre getting selected only because they were born in that district where there were fewer candidates of good calibre. In defence of such a classification, two reasons were urged : (1) that if district-wise classification was not provided, candidates from Madras city would get a larger number of seats in proportion to the population of the State, elbowing out candidates from the districts, and (2) if selection was made district-wise, those selected from a district were likely to settle down as practitioners in that district, so that the districts were likely to benefit from their training. It was conceded that Article 14 permitted classification. But this Court rejected the justification for the aforesaid classification urged by the State on the ground that the first meant that candidates from the districts, admitted to be of inferior calibre than candidates from Madras city, would stand a better chance of selection, a result defeating the very object of selection, namely, to get the best candidates, and the second on the ground that it was neither pleaded in the counter-affidavit of the State, nor had the State placed any fats or figures justifying the plea that students selected district-wise would settle down as medical practitioners in the respective districts where they resided. In Periakaruppan v. Tamil Nadu, (1971 (1) SCC 38) a rule which provided for distribution of seats unit-wise and which set up different selection committees for each unit was held to be bad on the ground that it did not differ much from the district-wise distribution struck down in Rajendran's case (supra). Whereas formerly the distribution was district-wise, the system under attack established six units where medical colleges were situate, namely, Madras city, Madurai, Chingleput, Coimbatore, Thanjauvr and Tirunelveli. Though in theory the candidates has the liberty to apply for any one or more of those units, they were advised to apply to the unit nearest to their residence and were also informed that even if they were to apply to other units, their applications would be forwarded to the selection committee of that unit which was nearest to their residence. The consequence of the unit system was clearly to confine the candidates to the unit nearest to their residence.

21. It will be easily seen that the university-wise distribution of seats in the Government medical colleges has nothing in common with the district-wise or unit wise selection struck down in Rajendran's case (supra) and Periakaruppan's case (supra). In both the cases what was mainly objected to was that the selection would have to be made on the basis either of the place of birth or residence and the candidate was confined to the medical colleges at or nearest to such a place. Such a basis for selection was held to have no reasonable nexus with the object of the rules, namely, to select the most meritorious amongst the candidates to have the advantage of such education. In Periakaruppan's case (supra) there was a further infirmity, in that, there were several committees for

selection resulting in varying standards, thus defeating the very object of screening the candidates with a view to give chance to the best of them. Both these decisions are distinguishable as the basis on which the selection of candidates is sought to be made under the present rules is quite different in that it is neither district-wise nor unit-wise, but is university-wise. Therefore, the infirmities found in the selection rules in those two cases and for which they were struck down cannot be relevant in any scrutiny of the present rules much less can they be relied upon for an attack on them.

22. The three universities were setup in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feaseable to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centers for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of district-wise or unit-wise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders up to 20% of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in these rules would defeat the object of the rules as was said in Rajendran's case (supra) or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them. A preference to one attached to one University in its own institutions for post-graduate or technical training is not uncommon. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged, (see Chitra Ghosh v. Union of India (1969 (2) SCC 228 : (1970) 1 SCR 413 at 418)). In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would

naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14.

23. The last challenge to the validity of those rules was based on the allegation that they lay down excessive reservation for certain categories of candidates. As already stated, under Clauses (a) to (i) of Rule 4, sixty, out of the present aggregate of 765 seats at the disposal of the Government are set apart for the various categories of persons therein mentioned. As aforesaid, the Government is entitled to lay down sources from which selection for admission would be made. A provision laying down such sources is strictly speaking not a reservation. It is not a reservation as understood by Article 15 against which objection can be taken on the ground that it is excessive. The reservation, as contemplated by Article 15, is the one which is made under Rule 5, Under that rule, 15% reservation is for persons belonging to the Scheduled casts, 3% for Scheduled Tribes and 30% for socially and educationally backward classes, that is to say, 48% in all against 690 available seats after deducting 60 seats set apart under Rule 4. But, setting apart 15 seats under Rule 4 (g) for candidates who take up family planning programme does not constitute a reservation as any one of the lady candidates can take up that programme. Therefore, the seats available for distribution would be 720,48% of which are reserved under Rule 5. The question is whether such a reservation is unreasonably excessive.

24. It was not disputed that Article 15(4) the state was entitled to make special provisions for the advancement of socially and educationally backward classes. It has to be remembered that the object of Article 15(4) is to advance the interests of the society as a whole by looking after the interests of its weaker sections. But as stated in Balaji v. Mysore, (1963 Supp (1) SCR 439 : AIR 1963 SC 649 : (1963) 2 SCA 1) while making such a provision the rights and interests of the rest of the society are not to be absolutely ignored. Consideration for the rest of the society and those who are its weaker elements have both to be kept in mind and taking the prevailing circumstances as a whole have to be adjusted. The impugned provision in Balaji's case (supra) made reservation of 68% of the seats for the socially and educationally backward classes in medical and engineering colleges. Such a high percentage was held to amount almost to a exclusion of the deserving and qualified candidates from other communities, which also was not in the interests of the society as a whole. The Court there observed that in adjusting the claim of both the weaker and the stronger elements the reservation for the former should ordinarily be less than 50% although no inflexible percentage could be fixed and the actual reservation must depend upon the relevant prevailing circumstances in each case. In Periakaruppan's case (supra) 41% reservation for the socially and educationally backward classes was held not to be excessive. No materials have been placed before us which would show that in the circumstances prevailing in Mysore State reservation made under Rule 5 is unreasonably excessive Setting apart 60 seats under Rule 4 is, as already stated, not a reservation but laying down sources for selection necessitated by certain overriding considerations, such as obligations towards those who serve the interests of the country's security certain reciprocal obligations and the like. The reservation under Rule 5, though apparently on the high side, not having been shown as unreasonably excessive, the contention in regard to it must fail.

25. These were the only three heads under which the validity of the rules was challenged. For the reasons set out above, none of them can be upheld. The writ petition, therefore, fails and has to be rejected.

#Writ Petition No. 621 of 1970##

26. The petitioner here was born on August 2, 1954 at Bellary. Bellary had become part of the State of Mysore on October 1, 1953 in consequence of the reorganization of States. In April 1954, her father, who was till then serving as a Government servant in the State of Mysore, was transferred to Andhra Pradesh where he continued to serve until his retirement from service on June 11, 1970. According to Para (2) of the petition, the petitioner was during this period with her father at Cuddappah in Andhra Pradesh where he was serving. In 1968-69, the petitioner passed her S.S.L.C. examination at Cuddappah obtaining first class marks. In 1969-70, she passed her P.U.C. examination from a Government college affiliated to Venkateswara University in Andhra Pradesh with Physics, Chemistry and Biology as her optional subjects, securing in those subjects 150 out of 200 marks, i.e., 75%.

27. On July 22, 1970, she made an application for selection to a seat in any one of the medical colleges affiliated to the Karnatak University. An interview card was issued to her which bore No. K-20, which signified that she was a candidate for selection for admission in a medical college affiliated to the Karnatak University. On October 6, 1970, the Selection Committee published a list of selected candidates, but her name was not included in the said list.

28. According to the petition, the last student admitted to the Bellary Medical college in the general pool of seats, (that is from the balance of seats, after deducting from the total number of seats, seats reserved under Rules 4 and 5) had obtained less marks in the P.U.C. examination than marks obtained by her, that is, 295 out of 450 marks which would be 65.6%. The last student admitted to the Karnatak Medical College, Hubli had also obtained 295 out of 450 marks, i.e. 65.6%. Both these students had passed the P.U.C. examination held by the Karnatak University.

29. The reason for non-inclusion of the petitioner's name in the said list given by the Selection committee was that she was not "a resident in the State of Mysore for not less than 10 years at any time prior to the date of the application for a seat" as required by Rule 3 of the said Rules. Rule 3 requires that to be eligible for selection, a candidate must be (a) a citizen of India, (b) a person domiciled in the State of Mysore, and (c) a resident of the State for at least 10 years at any time before the date of application. Rule 9(1) provides that seats other than those reserved under Rule 4 shall be distributed university-wise, i.e., seats in colleges affiliated to the Karnatak University shall be allotted to person passing from colleges affiliated to that university, and seats in colleges affiliated to Bangalore and Mysore Universities shall respectively be allotted to persons passing from colleges affiliated to each such university. That rule, however, has a proviso which lays done that not more than 20% of the seats in colleges affiliated to any university may in the discretion of the Selection Committee be allotted to students passing from colleges affiliated to any other university in the state or elsewhere in India. Thus, candidates applying for selection fall into two two categories : (1) those having passed the P.U.C. examination from colleges affiliated to that university to which a medical college in which admission is sought is affiliated, and (2) those having passed the P.U.C. examination or an equivalent examination held by other universities in Mysore State or even elsewhere. The petitioner, therefore, belonged to the second category inasmuch as she was a candidate who had passed her P.U.C. examination not through a collage affiliated to the Karnatak University, but one who had passed the P.U.C. examination from a university to which none of the medical colleges in Karnatak was affiliated. Therefore, the proviso to Rule 9(1) would be applicable to her and she would be eligible for selection only from out of the 20% of the seats at the most left in the discretion of the Selection Committee.

30. No question relating to Rule 9, however, was raised. The case, placed before us on behalf of the petitioner, was that she was a person who had a domicile in Mysore State and had resided in the

State during the period prescribed by Rule 3 and was therefore, entitled to be considered along with the rest of the candidates. Even assuming that to be so, the question is whether she satisfied the conditions of Rule 3 as regards residence.

31. Annexed to her application for selection, dated July 22, 1970, was a certificate from the Tehsildar, Bellary, certifying that she had not only her domicile in Mysore State but that she had also resided in the State for a period of 10 years prior to the date of her application. In Column 13 of the application, where particulars of institutions where the candidate had studied had to be given, it was stated that the petitioner had studied in Bellary during the years 1959 to 1963, and thereafter, from 1963-64 to 1968-69 in different institutions in Andhra Pradesh. We will assume, though her father was in Andhra Pradesh where he served from 1954 to June 1970, that she was kept in her infancy in Bellary, the total Period of her residence would prima facie come to little less than 9 years, i.e., from August 2, 1954, her date of birth, to 1963. Therefore, the certificate obtained from the Tehsildar, certifying that she had resided in Mysore for 10 years at any time prior to the date of her application, would appear not to be factually correct.

32. This difficulty, however, was sought to be got over by the affidavit in rejoinder filed by her father in which it was stated that though the petitioner had been studying in Andhra Pradesh after 1963, she used to come to the family house in Bellary during her vacations, and therefore, she must be deemed to have resided all throughout at Bellary. Such an explanation, however, suffers from two defect : (1) that such a plea was made for the first time in the affidavit in rejoinder in answer to the counter-affidavit filed by the respondents, and (2) that residence as contemplated by Rule 3 must prima facie have an element of continuity or regularity in residence and would not mean an intermittent stay such as during the vacations. It would thus appear that the petitioner did not, notwithstanding the certificate of residence issued by the Tehsildar, comply with the requirement of 10 years residence under Rule 3. However, for the reasons stated hereafter it is not necessary to go into these questions either as regards the facts relating to her residence in Bellary or the validity of Rule 3 sought to be challenged in this petition.

33. It is true that the petitioner obtained in the P.U.C. examination held by Venkateswara University, 150 out of 200 marks in optional subjects taken by her, but as her application itself shows, the total number of marks secured by her in that examination were 389 out of 600 marks, i.e. 65%. Even according to her, the last student who secured selection for the Bellary Medical College had secured 295 out of 450 marks, i.e., 65.6%. The same percentage of marks was also secured by the last student admitted to the Karnatak Medical College, Hubli, both these students having passed the P.U.C. examination held by the Karnatak University. Therefore, even irrespective of the fact whether she had qualified herself or not under Rule 3, she could not have been selected for either of these two college in Karnatak.

34. The argument that she had been discriminated against in the sense that though she had secured 75% marks she was not selected and others with lesser number of marks than those secured by her were selected for medical colleges affiliated to the Karnatak University was founded on a wrong premise. For comparison between herself and the said two candidates she took her marks in optional subjects only and apparently compared them with the total marks obtained by the said two students in the whole of the P.U.C. examination. There was thus no comparison between persons equally situated even as regards the number of marks secured by them. But apart from that, the result obtained by a student in an examination held by one university cannot be regarded as comparable with the result obtained by another candidate in an examination held by another university. Even assuming that a conscious effort is made to equalise standards obtaining in different universities,

such standards depend on several human factors, methods, of teaching and examining, the syllabus in such universities etc. even though the subjects taught and examined were to be the same. It is well-settled that question of discrimination can only arise in the case of persons equally situated. That the petitioner and those whom the Selection Committee selected were equally situated cannot, from the facts above stated, be assumed. Consequently, the argument that Rule 3, by prescribing the 10 years' residence in Mysore State as a qualification for eligibility, is arbitrary and discriminatory becomes academic and need not to be gone into in the present writ petition as the petitioner, even without insisting on that qualification, was not entitled to be selected.

35. In this view the petition cannot succeed and has to be dismissed.

#Writ Petition No. 622 of 1970##

36. The petitioner is a science graduate having passed her B.Sc. examination held by the Bangalore University in 1969. In that examination she secured 505 out of 1,000 marks, i.e., 50.5%. On July 23, 1970, she applied for being admitted to the Pre-professional Course in Medicine. Her name did not appear in the list of selected candidates issued by the Selection Committee under the Rules for Selection of Candidates for Admission, 1970, framed by the State Government. Aggrieved by the non-inclusion of her name, the petitioner filed this writ petition.

37. Besides raising several disputes which are common to other writ petition in the present batch, she raised an additional issue challenging the validity on Rule 4(h) of the said Rules. As already stated, the rule provides for reservation of seats for different categories of candidates applying for selection and clause (h) reserves 4 seats each in the medical colleges at Bangalore, Mysore and Hubli, and 3 seats in the Medical College at Bellary, in all 15 seats, for the "Children of Political Sufferers". The petitioner did not challenge the reservation of seats made in this rule for other categories of persons, such as children of Defence Personnel and Ex-Defence personnel, etc.

38. The challenge to the validity of clause (h) was twofold. It was, firstly, said that the expressions "political sufferer" and "the national movement for the emancipation of India" in the definition of a "political sufferer" are so vague and ambiguous that it would be impossible to identify the category of persons for whose benefit clause (h) was framed, and consequently, there would be ample room for those administering these rules to resort to partiality, discrimination and favouritism. The second objection was that the category of children of political Sufferers was merely fanciful, politically oriented and without any intelligible differentia, and as such the classification had no reasonable nexus with the object of these rules. A number of decisions of different High Courts dealing with similar admission rules were cited for reinforcing the argument against the validity of clause (h) of Rule 4.

39. So far as the first part of the argument is concerned, it is difficult to envisage the danger apprehended by counsel or to see the kind of vagueness or ambiguity complained of by him. The rule contains the definition of a "political Sufferer" as meaning a person who "on account of participation in the national movement for the emancipation of India" had suffered imprisonment or detention for a period of at least six months, or had been awarded capital punishment, or had died while undergoing imprisonment or detention or was killed or became permanently incapacitated by police or military firing or Lathi charge, or lost his "job, property or other means of livelihood". The definition is couched in clear and unambiguous language, besides containing sufficient details, so as to distinctively identify the persons who would fall within it. The person must have suffered incarceration, whether as imprisonment or detention, for a period of at least six months or been

awarded capital punishment, or must have died while actually in detention or undergoing imprisonment, or killed or incapacitated permanently by firing or Lathi charge by the police or by the military, or must have lost employment, property or other means of livelihood. These should have been the consequences of his having participated in the national movement for the emancipation of India. The "national movement" must obviously mean the late struggle for the freedom of the country from the alien British rule. The ambiguity, counsel complained of, in these words in the definition is difficult to comprehend. There are ample details in the definition not to leave any scope for arbitrariness or discrimination in its application to a candidate who claims to be a child of the political sufferer envisaged by clause (h) of the rule. We, therefore, turn to the second part of the argument without detaining ourselves any further on the grievance of ambiguity in the definition.

40. The argument is that the category of children of political sufferers is arbitrary in the sense that it is entirely politically oriented, is without any rational differentia and has no nexus with the object of the rules. In support of the argument against such a category, the case of Surendrakumar v. State (AIR 1969 Raj 182) was cited as in illustration where a similar category had been struck down. The State Government there had made reservation of seats which was incorporated in the prospectus issued by each of the five medical colleges run by the Government. The reservation was challenged on the ground of its infringing Article 14. The reservation was in respect of five categories of candidates, namely, (1) for foreign private students, cultural scholars and private students of Indian origin domiciled abroad, (2) students migrating from Burma (3) candidates from Scheduled Castes and Tribes belonging to Rajasthan, (4) children of Defence personnel belonging to Rajasthan, and (5) children of political sufferers who are or were bona fide residents of Rajasthan and who had been to jail in any part of India. Among other things, the reservation for children of political sufferers was made the target of the challenge. The High Court upheld the challenge on the grounds : (1) that if the object was to afford facilities to political sufferers there was no reason why the benefit was restricted to the residents of Rajasthan only, (2) that the expression 'political sufferer' not being a term of art, opinions might honestly differ as to what sacrifices would be sufficient to clothe a person with the status of political sufferer, (3) that the independence movement came to an end several years ago, and therefore, if any facilities were to be afforded to those who had suffered by their participation in it they could be given once only, and (4) that there was no justification for such a classification as the only valid classification could be for obtaining the best material for medical profession and such a reservation could not achieve but on the contrary defeat that object.

41. In two other decisions, Umesh Chandra v. V. N. Singh (1967) ILR 46 Pat 616)) and Kerala v. Jacob (AIR 1964 Ker 316) a provision authorising special preference to the children of the employees of the University who had rendered meritorious service to the University, and a provision for reservation for children of registered medical practitioners in modern medicine were struck down, the first on the ground that it would lead to favouritism and patronage, and the second on the ground that the classification was not a rational one. Ramchandra v. State (AIR 1961 MP 247) is yet another case where the High Court, dealing with rule providing for 3% of the seats for children of bona fide political sufferers as defined in M. P. Freedom Fighters' Pension Rule, 1959, observed, though it declined to set them aside on other grounds, that "the preferential treatment accorded to them (the children of political sufferers) is based upon irrelevant and wholly extraneous considerations because there is no rational relation between the political suffering of a person and the education imparted to his descendants in a medical college with the object of promoting efficiency in the medical profession."

42. On account of paucity of institutions imparting training in technical studies and increasing

number of candidates seeking admission therein, there is obviously the need for classification to enable fair and equitable distribution of available seats. The very decisions relied on by counsel for the petitioner implicitly recognise the need for classification and the power of those who run such institutions, to lay down classification. In Rajendran's case (supra) this Court impliedly accepted two sources of recruitment made under the rules there challenged, namely, (1) those competing for seat in the general pool, and (2) those from the socially and educationally backward classes for whom reservation permitted under Article 15(4) was made. What was struck down there was the district-wise distribution based on sheer residence as that would defeat the very object of the rules, namely, the selection of the best and the most meritorious from the two sources of recruitment. The power to lay down sources from which selection would be made was expressly conceded to the Government in Chitra Ghosh v. Union of India (supra), this Court observing in that connection at pp. 418 and 419 of the report that since it was the Government which bore the financial burden of running the medical college, it could lay down the criteria for eligibility and that from the very nature of things it was not possible to throw the admission open to students from all over the country. Consequently, the Government could not be denied the right to decide from what sources admissions would be made. The Court at the same time emphasised that if the sources were properly classified, whether on territorial, geographical or other reasonable basis, the Court would refuse to interfere with the manner and the method of making the classification. The classifications there made were in relation to candidates from Union territories other than Delhi, children of Central Government servants posted in Indian mission abroad, candidates under the Colombo Plan and other international arrangements, scholars from Jammu and Kashmir, etc. These classifications were found justifiable on one ground or the other and based on intelligible differentia which distinguished candidate falling within them from the rest. The Mysore High Court, in Subhashini v. State (AIR 1966 Mys 40) similarly recognised that there could be valid reservations, apart from those permissible under Article 15(4), that such reservations did not necessarily infringe the equality protection under Article 14 and held that classification based on a lawful State policy was not violative of that article. It upheld on this principle the reservation for children of Defence Personnel Ex-Defence Personnel as being clearly in national interest. (see also Anil Kumar v. Mysore ((1969) 17 LR (Mys) 110).)

43. Once the power to lay down classifications or categories of persons from whom admission is to be given is granted, the only question which would remain for consideration would be whether such categorisation has an intelligible criteria and whether it has a reasonable relation with the object for which the rules for admission are made. Rules for admission are inevitable so long as the demand of every candidate seeking admission cannot be complied with in view of the paucity of institutions imparting training in such subjects as medicine. The definition of a 'political sufferer' being a detailed one and in certain terms, it would be easily possible to distinguish children of such political sufferers from the rest as possessing the criteria laid down by the definition. The object of the rules for admission can obviously be to secure a fair and equitable distribution of seats amongst those seeking admission and who are eligible under the University Regulations. Such distribution can be on the principle that admission should be available to the best and the most meritorious. But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who, but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Article 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Article 15(4). It

is on such a principle that reservation for children of Defence personnel and Ex-Defence personnel appears to have been upheld. The criteria for such reservation is that those serving in the Defence forces or those who had so served are and were at a disadvantage in giving education to their children since they had to live, while discharging their duties, in difficult places where normal facilities available elsewhere are and were not available. In our view it is not unreasonable to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage. If that be so, it must follow that the definition of 'political sufferer' not only makes the children of such sufferers distinguishable from the rest but such a classification has a reasonable nexus with the object of the rules which can be nothing else than a fair and just distribution of seats. In our view, neither of the two contentions raised by counsel for the petitioner can be accepted, with the result that the writ petition fails and is dismissed.

44. Writ petitions Nos. 618 and 620 of 1970 raise questions similar to those dealt hereinbefore. In accordance with the reasons hereinbefore given, they fail and are dismissed.

45. The result is that all the five petitions are dismissed, in the circumstances of the case we make no order as to costs in any one of them.

DUA, J. –

I have read the judgment prepared by my learned brother Shelat, J., and I agree that all the writ petitions should be dismissed with no order as to costs. I should, however, like, as at present advised, to refrain from expressing any considered opinion on the validity of Rule 4(h) of the Mysore Medical Colleges (Selection for Admission) Rules, 1970. The category of persons in whose favour seats in the Medical College mentioned in this sub-rule are reserved are described as "children of political sufferers". The expression "political sufferers" is defined in Explanation (ii) to mean :

> "a person who on account of participation in the national movement for the emancipation of India -
>
> (a) has suffered imprisonment or detention for a period of not less than six months, the said period being calculated taking into account the period of remission, if any, granted for good conduct and other like reasons, or had been awarded capital punishment or had died while undergoing imprisonment or detention; or
>
> (b) was killed or became permanently incapacitated by police or military firing or Lathi charge; or
>
> (c) lost his job, property or other means of livelihood."

47. The petitioner's learned counsel relied on several decisions in support of his challenge to the validity of this sub-rule or the ground that this reservation has no rational nexus with the object of selecting the most meritorious or suitable candidates for medical education so that they may be able both to serve the people as doctors with the requisite efficiency and to find adequate means of livelihood for themselves. According to the petitioner's argument the mere fact that the parents of such candidates had before 1947, as a result of their participation in national movement for the

emancipation of India from the foreign rule, suffered imprisonment, detention disablement or loss of property or job, does not necessarily clothe them with an intelligible differentia distinguishing them as a separate class in 1970 for admission to the Medical College. It was contended that what may have happened more than 23 years ago (as no question of the national movement for the emancipation of India could arise after Indian independence) is far too remote in point of time for serving as a rational differentia for sustaining the present classification in favour of the children of such political sufferers. It was not denied that the Government could and should extend all help needed to rehabilitate such sufferers in order, so far as reasonably possible, to undo or minimise the effect of or to compensate them for, their suffering during the national movement. But that is quite different from giving their children preference over other candidates otherwise equally placed in the matter of admission to Medical Colleges in 1970, unless there are cogent grounds for holding that because of their parents' suffering prior to 1947 the children have been so handicapped as to require a favoured treatment in this respect. The case of the children of defence personnel, it was urged, clearly stands on a different footing, as in their case from the very nature of the duties of the defence personnel their children are generally speaking likely to suffer from handicaps justifying preferential treatment. Minor P. Rajendran v. State of Madras ((1968) 2 SRC 786 : AIR 1968 SC 1012 : (1968) 2 SLJ 801) was cited in support of the submission that the fact that classification by itself is reasonable is not enough to support it, unless there is a nexus between the classification and object to be achieved and also that the object to be achieved in a case of admission to the Medical Colleges is to get the best talent for admission to professional colleges.

48. The learned Attorney-General, however, drew our attention to Chitra Ghosh v. Union of India (1969 (2) SCC 228 : (1970) 1 SCR 413) in which, after approving the view taken in Minor P. Rajendran's case (supra), it was added that the object of selecting the best possible material can be achieved by making proper rules for admission. Permissible classification, according to the petitioner's argument, must be founded on an intelligible differentia distinguishing persons grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the provision in question. It was emphasised that what has to be seen is the distinguishing feature existing at the time of the admission and the fact that the parents of the candidates had suffered by their patriotic activities admittedly more than 23 years ago does not reasonably lead to an inference that in 1970 also the children of such political sufferers constituted a class by itself requiring preference over other candidates seeking admission to the Medical Colleges.

49. The learned Attorney-General apart from relying on the case of Chitra Ghosh (supra) submitted that the petitioner in Writ Petition No. 622 of 1970 (R. Jayashree), in which case alone this sub-rule was challenged, had obtained marks which were lower than the last candidate admitted from the category of the children of political sufferers. On this ground it was submitted that, even assuming Rule 4(h) to be invalid, the petitioner could not claim admission, because her marks were admittedly lower than those of the last candidate admitted from the category of the children of political sufferers. Those children, even ignoring Rule 4(h), had a preferential right as against the petitioner R. Jayashree. In that situation the learned Attorney-General contended the question of the invalidity of Rule 4(h) loses all importance and would hardly be material.

50. I must confess that from the very beginning I entertained some doubt about the validity of Rule 4(h), and that doubt has not been dispelled ever after hearing the arguments addressed at the Bar. The object of selection for admission to the Medical Colleges, considered in the background of the Directive Principles of State Policy contained in our Constitution, appears to be to select the best material from amongst the candidates in order not only to provide them with adequate means of livelihood, but also to provide the much needed medical aid to

the people and to improve public health generally. As already observed, I am not quite sure if it can be confidently said that there is a reasonable nexus between the differentia on which the children of political sufferers are classified as a distinct a group and object of admission to the Medical Colleges. In view, however, of the admitted fact that the marks secured by the petitioner R. Jayashree were lower than the marks secured by the last candidate admitted from the category of the children of political sufferers, the petitioner was not entitled to claim admission, even if the children of political sufferers were not given any priority. On this ground alone the present Writ Petition (No. 622 of 1970) deserves to be dismissed. I accordingly consider it unnecessary to go into the question of the invalidity of Rule 4(h) in this case. I would thus confine the order of dismissal of Writ petition No. 622 of 1970 only on this ground without expressing any considered opinion on the question of the validity of Rule 4(h). Except for my reservation on this point, I am in respectful agreement with all that has been said by my learned brother Shelat, J.

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