

MYSORE HIGH COURT

Ramakrishna Singh Ram Singh

Vs

State of Mysore

Writ Petns. Nos.567, 572, 574 and 575 of 1959

(S.R. Das Gupta, C.J. and H. Hombe Gowda, J.)

18.09.1959

JUDGMENT

S.R. Das Gupta, C.J.

1. In these petitions the Petitioners are challenging two orders passed by the Government of Mysore being Order No. ED 79 TGL 59 dated 14th May 1959 and Order No. ED 79 TGL 59 dated 22nd July 1959. In the first order, that is, the order dated 14th May 1959, it was stated as follows :

"With the Reorganization of States and the formation of the new State of Mysore, the question of evolving a uniform policy in regard to reservation of seats in the Professional and Technical Colleges and Institutions in favor of socially and educationally Backward Classes of citizens has been under the active consideration of the Government.

After careful consideration of all aspects of the question, the Government have come to the conclusion that communities set down in the Annexure hereto are the other socially and educationally backward classes of citizens. In supersession of Government Order No. ED 129 UNI 58, dated 26th July 1958 read above, it is ordered that reservation of seats in Technical and Professional Colleges and Institutions for Scheduled Castes and Scheduled Tribes be fixed at 20 per cent, and reservation of seats for other socially and educationally Backward Classes at 45 per cent and that the remaining 35 per cent of the seats shall be filled up on the basis of merit." The annexure referred to in the said Order purports to be a consolidated list of other Backward Classes in New Mysore State and enumerates 164 communities as such Backward Classes. The said list includes Muslims, Indian Christians, Sikhs and various sub-castes of the Hindus, e. g., Lingayet, Kuruba, Kansara, Vokkaliga, Bhants, Raddis and Kunchitigas etc. It was stated before us by the learned Government Pleader that so far as he is aware except Brahmins, Baniyas and Kayasthas all other castes of the Hindu religion as existing in the State of Mysore have been noted in the said list as belonging to Backward Classes. It was further stated by the learned Government Pleader appearing for the State that of the communities other than the Hindu community only Parsis and Anglo-Indians were excluded from the said list and the rest were all

enumerated therein.

2. By the second order dated 22nd July 1959 it was inter alia ordered as follows :

"In the Government Order dated the 14th May 1959 it has further been directed that the reservation for other socially and educationally backward classes shall be 45 per cent. Since provision for the advancement of all such socially and educationally backward classes of citizens is necessary, it is ordered that the said classes should be separately grouped and the percentage of reservations for each such group fixed for the allotment of seats in Technical and Professional Institution. Accordingly, it is hereby, ordered that the various other socially and educationally backward classes be grouped as specified in column 2 of the following Table and the percentage of reservation in respect of each group be as specified in Column 3 of the corresponding entry in respect of each group."

On reference to the table set out in the said order, it would appear that the communities mentioned in the annexure to the earlier Order have been subdivided into several groups and the percentages of the seats to which each of the said groups are eligible have also been enumerated therein; e.g. Lingayats including Jangams and Kuduvokkals have been grouped together and the percentage of seats reserved for them is 8.5 per cent. Again, for example 8 communities including Rajputs have been grouped together and the percentage of seats reserved for all of them has been fixed at 3.2 per cent. Similarly Muslims have been grouped with certain other communities and their percentage has been fixed at 5.6, and the Jains have been grouped with a large number of communities and the total percentage given to them is 2.4.

3. The Petitioners before us are challenging both these Orders as unconstitutional. The stand taken by the State, on the other hand, is that Article 15(4) of the Constitution permits the State to make such reservation. Before I set out more fully the contentions of the respective parties in these writ petitions, it would be necessary to refer to some of the Articles of the Constitution.

4. Article 15 of the Constitution which appears in the Chapter dealing with Fundamental Rights provides as follows :

"15 (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

(Clauses 2 and 3 of the said Article are not relevant for the present purpose.)

"(4) Nothing in this article or in clause (2) of article 29 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."

Article 29 (2) provides as follows :

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language

or any of them." In Article 12, which is the first article in this Chapter, it is provided that in this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

5. The next article to which reference need be made is Article 16(2) and (4) which provide as follows :

"(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

"(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

6. I next come to Part XVI of the Constitution. In this part special provision has been made relating to certain classes. Articles 330 to 342 are the articles which appear in this part. Article 330 deals with the reservation of seats for scheduled Castes and Scheduled Tribes in the House of the People. Article 331 deals with the representation of the Anglo-Indian community in the House of the People. Provision has been made for the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the State in Article 332. Article 333 deals with representation of the Anglo-Indian community in the Legislative Assemblies of the States. Article 334 provides that the reservations made in the earlier provisions of this part shall cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. Article 335 provides that claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Article 336 makes special provision for Anglo-Indian community in certain services. Article 337 makes special provision with respect to educational grants for the benefit of Anglo-Indian community. Then comes Article 338 which is material for the present purpose. It reads as follows :

"(1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community."

Article 339 provides for the control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes. Article 340 reads as follows :

"(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

Articles 341 and 342 should also be set out in extenso. They provide as follows :

"341 (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.

(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, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

"342 (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 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.

(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, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

These are all the articles which need be referred to for the present.

7. Mr. Venkataranga Iyengar appearing on behalf of some of the Petitioners in these writ petitions challenged on various grounds both the orders passed by the Government of Mysore. It would be convenient to deal with his arguments with respect to each of these orders separately. I shall first take up his arguments so far as they relate to the order of the Government of Mysore dated 14th May 1959.

8. The first contention urged before us by Mr. Venkataranga Iyengar on this head was that "the State" mentioned in Article 15(4) of the Constitution means the Legislature of the State and not the Government. Therefore, it was contended, the Government could not under Article 15(4) of the Constitution make an order of this kind and it would be for the Legislature to do so.

9. The second contention of Mr. Venkataranga Iyengar was that under Article 15(4) of the Constitution provision can be made for backward classes but no provision can be made for backward castes. He urged before us that Article 15(1) makes it quite clear that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them; the only exception to that prohibition being that the State, which means the Legislature, may make provision for the advancement of "Scheduled Castes and Scheduled Tribes" and also for "socially and educationally backward classes of citizens." Mr. Venkataranga Iyengar contended that under Article 15(4) itself a distinction has been made between "classes" and "castes". The only caste for which special provision can be made is the Scheduled Caste and no special provision can be made for any caste other than the Scheduled Caste. Mr. Venkataranga Iyengar further contended that provision can no doubt be made for backward classes but such provision can be made not on the basis of castes but on the basis of classes. In other words, according to him, backward classes have to be determined not on the basis of castes, which is forbidden by Article 15(1), and Article 15(4) makes no exception to that prohibition except in the case of Scheduled Castes, but on territorial, economical, occupational or some such basis. For example, he mentioned Agriculturists or Fishermen may form Classes and if they happened to be socially and educationally backward then special provision may be made for their advancement under Article 15(4) of the Constitution.

10. The third contention raised by Mr. Venkataranga Iyengar was that the State, whether it is the Government or the Legislature, cannot decide who the socially and educationally backward classes of citizens are and make provision for such classes. He contended that it is the President acting under Article 340 of the Constitution who alone can determine which are the socially and educationally backward classes of citizens in the territories of India. It is only after the President has so determined the socially and educationally backward classes that the State would be entitled to make special provision for them. In fact a Commission was appointed by the President under Article 340 of the Constitution and one of the terms of reference to the Commission was "to determine the criteria to be adopted in considering whether any sections of the people in the territory of India (in addition to the Scheduled Castes and Scheduled Tribes specified by notifications issued under Articles 341 and 342 of the Constitution) should be treated as socially and educationally backward classes; and in accordance with such criteria, prepare a list of such classes setting out also their approximate numbers and their territorial distribution". The said Commission did investigate into this matter and it prepared a list but the same was not given effect to by the Government.

11. Mr. Venkataranga Iyengar's contention was that as the report of the Commission was not

given effect to and no fresh Commission has been appointed by the President to investigate into the matter and as socially and educationally backward classes of citizens in the territories of India have not yet been determined by the President under Article 340 of the Constitution, the State was incompetent to determine the socially and educationally backward classes of the State and to make special provision for their advancement.

12. The next contention of Mr. Venkataranga Iyengar was that this order which makes reservations on the basis of communities and castes and which is for the benefit of 95 per cent of the population, excluding only five per cent therefrom, is a fraud on the Constitution. Shortly put, his contention was that the Constitution never intended, in giving power to the State to make provision for the advancement of socially and educationally backward classes, that the said power should be utilized for the benefit of the entire bulk of the population excluding only a section thereof. He further contended that in the so-called list of backward classes communities, which are socially and educationally advanced and can by no means be said to be backward classes, are included and thus in the guise of making specific provision for the backward classes provision has been made for forward classes. This, he contended, was a fraud on the Constitution. He further contended that in the guise of making provision for the advancement of socially and educationally backward classes what the State has done is to discriminate against 5 per cent of the population of the State and to benefit the remaining 95 per cent thereof. Discrimination against a small section of the people which was done on the ground of caste and/or religion is opposed to the fundamental right guaranteed by Article 15(1) and not permitted by Article 15(4) of the Constitution.

13. The next contention of Mr. Venkataranga Iyengar was that this order is a fraud on a previous order passed by this Court in W. P. Nos. 369, 370 etc. of 1958 whereby this Court quashed an earlier communal Government Order issued by the State of Mysore, and is meant to circumvent the said order. Mr. Venkataranga Iyengar contended that in substance there is no difference between the earlier Government Order which was quashed by this Court and the present order of the Government; the only difference, if any, which is not a difference in substance, being that in the earlier Order all communities other than Brahmins were declared to be Backward Classes, while in the present order those communities have been enumerated.

14-15. The last contention of Mr. Venkataranga Iyengar was that this order determining the backward classes is not based on any principle and is wholly arbitrary and should be struck down. He contended that any discrimination made in favour of a class unless it is justified by Article 15(4) has to be struck down as infringing the fundamental rights guaranteed by the Constitution. Therefore, Mr. Venkataranga Iyengar contended, the Court, which is the sentinel of the fundamental rights guaranteed by the Constitution, has to see whether the so-called classification into socially and educationally backward classes is founded on any well recognised principle or is whimsical and arbitrary. If there is no principle on which such classification can be justified then the order should be struck down as whimsical and arbitrary. If, again, the principle on which it purports to be based is on the face of it unsustainable then also the order should be struck down as in that case there is a basic error.

16. As for the contention of Mr. Venkataranga Iyengar, viz., the State mentioned in Article 15(4) of the Constitution means Legislature of the State and not the Government, I am unable to accept the same. I shall consider later the question as to whether or not the word 'State' as mentioned in

the said Article also includes the executive Government and whether the power conferred by Article 15(4) of the Constitution is a power which is conferred also on the executive Government. Before doing that I should mention that in this matter there is no question of delegation by the Legislature of its powers to the Executive. This is a matter in respect of which there is no legislation. In respect of such matters the executive Government can function even if they may be matters of high policy. This is borne out by Article 162 of the Constitution which provides that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws, provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament. In the case of *Ram Jawaya v. State of Punjab*¹, their Lordships of the Supreme Court observed as follows :

"The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws".

Their Lordships in that case were considering whether the State had power to carry on a particular trade or business and it is in that context their Lordships observed as follows :

"Is it necessary that there must be a specific legislation legalizing such trade activities before they could be embarked upon? We cannot say that such legislation is always necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorize such expenditure either directly or under the provisions of a Statute".

When I come to examine the provisions of Article 15(4) of the Constitution and the meaning of the word 'State' I find that the said word includes the Government of a State. In Article 12 of the Constitution, it is provided that in Part III, unless the context otherwise requires, "State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or

¹ AIR 1955 SC 549

other authorities within the territory of India or under the control of the Government of India. Thus, the expression 'State' appearing in Article 15(4) of the Constitution, which is an article appearing in this Part III would include the Government of each State. Thus, the power conferred by the Constitution under the said Article is a power conferred on the Executive Government of the States. Thus both on general principle and under Article 15(4) read with Article 12 of the Constitution, it should be held that the Government of the State has power to make the order in question. Whether or not it has exceeded the limits of the power conferred by the said Article 15(4) is, however, a different question.

17. I shall now deal with the contention of Mr. Venkataranga Iyengar, viz., that the State cannot

decide who the backward classes are, although they can make provision for them under Article 15(4) of the Constitution. Action on this matter, according to him, has to be taken by the President under Article 340 of the Constitution. He referred us, for this purpose, to the provisions of Part XVI and contended that in that part special provisions have been made in respect of classes mentioned therein. He then drew our attention to Articles 341 and 342 of the Constitution appearing in the said part. In Article 341 it is provided that the President may, by public notification, specify the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes. In Article 342 there is a similar provision with respect to Scheduled Tribes and the President may specify the tribes or tribal communities, etc. 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. He contended that the corresponding provisions so far as backward classes are concerned is to be found in Article 340. Article 340 provides that the President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for purposes. Clause (2) of the said Article provides that a Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper. Mr. Venkataranga Iyengar contended before us that while the President has to determine the scheduled castes and scheduled tribes under Article 341 and Article 342 he has to determine the socially and educationally backward classes under Article 340 of the Constitution. He further contended that the reason for the difference in the manner in which Article 340 has been expressed is that it is not easy to determine the socially and educationally backward classes and therefore, the President has, in the first instance, to appoint a commission who will investigate into this question and determine who the socially and educationally backward classes are and make recommendations for the amelioration of their conditions. He particularly referred to clause (3) of the said Article wherein it is stated that the President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

"The action taken thereon", according to him, means and includes the decision of the President accepting or modifying the report of the Commission *inter alia* on the question as to who the backward classes are. He then referred us to Article 338 and particularly to clause (3) of the said Article. Article 338 provides that there shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President. Clause (3) of the said Article provides as follows :

"In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community."

Mr. Venkataranga Iyengar contended that clause (3) makes it clear that the President upon receipt of the report of the Commission appointed under clause (1) of Article 340 will make an order specifying the other backward classes, which, according to him, means the socially and

educationally backward classes, as mentioned in Article 340. Therefore, Mr. Venkataranga Iyengar contended, the irresistible conclusion must be that the President has to mention who the backward classes are and the State has no power to do so and the only power the State possesses is to make provision for them under Article 15(4) of the Constitution. I must admit that there is considerable force in this contention. At one stage of the arguments I was inclined to accept it. But on further consideration I have come to the conclusion that the State has power to determine who the socially and educationally backward classes are and to make provision for them under Article 15(4) of the Constitution. The object of Article 340 is to enable the executive to take steps to remove the difficulties of the backward classes and to improve their conditions. It is for that purpose that a Commission has to be appointed by the President. To achieve that purpose the Commission has no doubt to determine who the backward classes are. But the classes enumerated by the Commission as socially and educationally backward classes, even though accepted by the President, will not for purposes of the Constitution and therefore for Article 15(4), mean the socially and educationally backward classes. This is clear from the fact that in clauses (24) and (25) of Article 366 of the Constitution, "Scheduled Castes" has been stated to mean castes, races or tribes or parts of or groups within such tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution and "Scheduled Tribes" has also been said to mean such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. It has not been mentioned in the said Article or in any other Article of the Constitution that for purposes of this Constitution that the socially and educationally backward classes would mean the classes who have been specified by the President under Article 340 of the Constitution. This is, in my opinion, a very important point of difference. This difference is more accentuated by the fact that it is only with respect to Article 338 that the specification by the President as to the other backward classes will take effect. In my opinion, clause (3) of Article 338, instead of supporting Mr. Venkataranga Iyengar's contention negatives it. Clause (3), as I have already mentioned, provides that in this Article reference to Scheduled Tribes and Scheduled Castes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under Clause (1) of Article 340, by order specify and also to the Anglo-Indian Community. It is quite clear that for purposes of Article 338, the Scheduled Castes and Scheduled Tribes will also include other backward classes who will be specified by the President under Article 340 and would also include the Anglo-Indian Community. Therefore, the specification by the President under Article 340 would be effective so far as Article 338 is concerned. It cannot be said that the socially and educationally backward classes for purposes of the Constitution would be classes who are mentioned by the President under Article 340. I am unable to accept that contention. In any event, when the President has not made any such specification the State, in my opinion would be competent in acting under Article 15 (4) to do so. In my opinion, this contention of Mr. Venkataranga Iyengar must, therefore, fail.

18. I am also unable to accept the contention of Mr. Venkataranga Iyengar that backward classes cannot be determined on the basis of castes, and that they must always be determined on territorial, economical, occupational or some such basis.

In my opinion, it cannot be said with any such rigidity that determination can in no case be made on the basis of castes.

19. Mr. Venkataranga Iyengar contended before us that the spirit of the Constitution is to do away

with discrimination on the grounds of religion, race, caste or sex and any classification of backward classes made on the basis of castes would be against the spirit of the Constitution. In my opinion, it would be unsafe to depend upon the so-called spirit of the Constitution so as to ignore the express words thereof. This is also what their Lordships Chief Justice Kania and Mahajan, J. of the Supreme Court in the case reported *in*² *A.K. Gopalan v. State of Madras*, held and on this point no contrary view appears to have been expressed by the other learned Judges of the Supreme Court in the said case. Their Lordships observed as follows :

"There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument".

In the case of *Rananjaya Singh v. Baijnath Singh*³, their Lordships of the Supreme Court expressed a similar view and observed as follows :

"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of then language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

² AIR 1950 SC 27

³ AIR 1954 SC 749

What is stated in Article 15(4) of the Constitution is that nothing in Article 15 or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens. As "classes" has not been defined anywhere in the Constitution we have first to see what the plain and literary meaning of that word is. In the Oxford English Dictionary the word "class" has been stated to mean amongst others "division of society according status, rank or caste". Thus, according to its plain meaning "a class" may correspond to a body of persons grouped together on the basis of their castes. In my opinion, therefore, the competence of the Government to treat certain castes as backward classes cannot be ruled out. It would certainly be open to the Government to determine the classes on any other basis, e. g. geographical, or occupational. I am inclined to accept the contention of the learned Government Pleader that the basis on which classification of backward classes may be made would vary from State to State. In some States people residing in a particular geographical area may be grouped together as backward classes and in another certain castes may be determined as such backward classes.

20. The main argument of Mr. Venkataranga Iyengar on this point was in Article 15(4) a distinction has been made between 'castes' and 'classes.' The only castes for which provision can be made under the said Article are the Scheduled Castes and no other. Therefore, Mr. Venkataranga Iyengar contended when Article 15(4) mentions 'socially and educationally

backward classes of citizens' it does not refer to any castes or classes based on castes. He further referred to Clause (1) of Article 15 which is the main clause in the said Article. The said clause prohibits the State from making any discrimination on the ground, amongst others, of castes. Under Article 15(4) an exception has been made to the provisions of Article 15(1) and that exception is only in favour of the Scheduled Castes and no other castes. He, therefore, contended that determination of backward classes on the basis of castes is unwarranted by Article 15(4) of the Constitution. This contention of Mr. Venkataranga Iyengar is no doubt attractive, but I am unable to accept the same as sound. In my opinion, exception to the provision that the State shall not discriminate against any citizen on the ground, amongst others, of castes has been made not only in favor of Scheduled Castes but also in favor of socially and educationally backward classes of citizens. It would not be right to hold that exception to that part of the provision in Article 15(4), namely, that there cannot be any discrimination on the ground of castes has been made only in respect of scheduled castes. In my opinion, "socially and educationally backward classes of citizens" equally form an exception to that provision. In fact the entire provision of Article 15(4) forms an exception to the entire provision of Article 15(1) of the Constitution and it would not be right to dissect the said clauses and to hold that one part of Article 15(1) refers to backward classes.

21. In my opinion, the principle on which Article 15(4) is based is that the classes of citizens who are really backward should receive special attention. There was no difficulty in mentioning the Scheduled Castes and Scheduled Tribes in the said Article as the President under Articles 341 and 342 are required to specify them. In other words, they can be straightway enumerated as belonging to such backward classes. It is for this reason that they have been specifically mentioned in Article 15(4). But there is difficulty in mentioning who the other backward classes are and the Constitution has not attempted to specify them. Therefore, the Constitution has left it in general terms by saying 'socially and educationally backward classes of citizens' in Article 15(4) of the Constitution. In other words, the effect of Article 15(4), to my mind, is that the Scheduled Castes and Scheduled Tribes and other socially and educationally backward classes of citizens would get benefit of that Article. As I have mentioned just now, the Constitution has not said who the other socially and educationally backward classes are. That, as I have said, can be determined by the State. In my opinion, the Scheduled Castes and Scheduled Tribes form a part of the socially and educationally backward classes of citizens and they have been specially mentioned because there was no difficulty in specifying them as the Constitution requires the President to do so. That being my view, I am unable to hold that socially and educationally backward classes of citizens can in no circumstances be determined on the basis of castes. This contention of the learned Advocate for the Petitioners must, in my opinion, fail.

22. I shall now take up the last contention of Mr. Venkataranga Iyengar. In my opinion the said contention is sound and should prevail. It can hardly be disputed that any discrimination made on grounds of religion, race, caste, sex, place of birth or any of them, unless the same can be justified under Clause (4) of Article 14 of the Constitution, would be violative of the fundamental rights guaranteed under the Constitution and has to be struck down. It has, therefore, to be seen whether discrimination made in the present case in favor of the classes and/or castes enumerated in the Government Notification dated 14th May 1959 can be justified by the provisions of Article 15(4) of the Constitution. I am unable to accept the contention of the learned Government Pleader that Articles 15 and 14 and other Articles appearing in Chapter III of the Constitution merely place a restriction on the existing power of the States and Article 15(4) lifts that

restriction in the case of socially and educationally backward classes. The proper approach to the matter would be to hold that the provisions of this Chapter conferred fundamental rights on the citizens of the State and Article 15(4) only abridges those rights. In other words, it is to the extent as provided in Article 15(4) that the fundamental rights conferred upon the citizens of the State by Article 15 and Article 29(2) could be abridged. If the reservation in question cannot be justified by the provisions of Article 15(4) then the same has to be struck down as infringing the fundamental rights of the Citizens. This was also the view which was taken by the Andhra Pradesh High Court in the cases reported in AIR 1958 Andhra Pradesh 129, *Raghuramulu v. State of Andhra Pradesh* and⁴ *Puppala Sudarsan v. State of Andhra Pradesh*. I respectfully agree with the view expressed therein.

23. The learned Government Pleader for the State contended before us that the decision of the Government that the classes mentioned in the notification are the backward classes is final and the Courts cannot question the same. I am unable to accept this contention. In the case reported in *State of Madras v. V.G. Row*⁵, their Lordships of the Supreme Court in dealing with the question of power of judicial review of legislation observed as follows :

"Before proceeding to consider this question we think it right to point out,

⁴ AIR 1958 And Pra 569

⁵ AIR 1952 SC 196

what is sometimes overlooked, that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted 'due process' clause in the Fifth and Fourteenth Amendments. If, then, the Courts in this Country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the 'fundamental rights' as to which this Court has been assigned the role of a sentinel on the 'qui vive'. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country". It would appear from the aforesaid observations of their Lordships of the Supreme Court that it is the duty of the Court to determine finally the constitutionality of an impugned statute. In this case it would be our duty to determine the constitutionality of the notification in question. In other words, we shall have to ascertain whether the reservations made in favour of the classes described as backward is constitutional; that is to say, justified by Article 15(4) of the Constitution.

In order to determine that, we have to see whether the communities mentioned in the said notification are communities "socially and educationally backward classes" as envisaged in Article 15 (4) of the Constitution. If they are not, then provision made for them is clearly unconstitutional. The Court, therefore, in order to determine finally the constitutionality of the impugned notification - and it is the duty of the Court to do so - has to go into the question as to whether the determination of "socially and educationally backward classes" is based on any

intelligible principle. If then there is no principle on which the said classification has been made the same has to hold as arbitrary and whimsical and in that case the Court would be entitled to strike it down as unconstitutional.

24. If, again, the Court finds that the so called principle on which the differentiation is sought to be made is wholly untenable, then also the Court should hold that the basis on which the said notification has been made fails and the Court in that event would also strike out the same. In this connection I would refer to the following observations made by their Lordships of the Supreme Court in the case reported in⁶ *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co., Ltd.*

"The principal questions for consideration in this appeal are :

1. Whether the provisions of the Ordinance for taking over the management and administration of the company contravene the provisions of Article 31(2) of the Constitution; and
2. Whether the Ordinance as a whole or any of its provisions infringe Articles 14 and 19 of the Constitution.

⁶ AIR 1954 SC 119

In order to decide these issues it is necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done; the Court, when such questions arise, is not over persuaded by the mere appearance of the legislation. In relation to constitutional prohibitions binding a legislature it is clear that the legislature cannot disobey the prohibitions merely by employing indirect method of achieving exactly the same result. Therefore, in all such cases the Court has to look behind the names, forms and appearances to discover the true character and nature of the legislation." Approaching the problem which is now before us in the manner as indicated above, it will have to be seen whether or not the State has disobeyed the constitutional prohibition and in order to do that this Court has to examine whether or not there is any intelligible basis on which the determination of backward classes has been made in the said notification.

25. The question can be examined from another point of view. If it is found that the selection made by the Government purporting to act by virtue of a power vested in it by Constitution, is not in furtherance of the policy and object of the Constitution but is arbitrary, then the Court can strike down the exercise of such power. (See *Jai Dayal Dalmia v. S. R. Tendolkur*⁷). In this connection I would refer to the following observations of Chief Justice Rajamannar made in the case of *Globe Theatres Ltd. v. State of Madras*⁸,

"The net result of these three decisions of the Supreme Court: *State of West Bengal v. Anwar Ali Sarkar*⁹, *Kathi Railing Rawat v. State of Saurashtra*¹⁰. and *Kedarnath Bajoria v. State of West Bengal*¹¹, appears to me to be this. If the policy and object of the Act can be discovered within the four corners of that Act including the preamble, and discretion is vested in the Government to make a selection in furtherance of that policy and object for the application of the Act, then the provision conferring such power is not void as offending Article 14 of the Constitution. If such power is improperly exercised in any particular case, that is, not in furtherance of the policy and object of the Act, but

arbitrarily, then the Court can strike down the exercise of such power on every such occasion."

In this case the policy and object of the Constitution is to ameliorate the conditions of really backward classes, socially and educationally. It has, therefore, to be seen whether the action of the Government in making the selection is not in furtherance of that policy and object but is arbitrary.

26. I shall now determine whether the classification made by the Government in this case rests on any intelligible principle; The order of the Government dated 14th May 1959 merely recites that after careful consideration the Government has come to the conclusion that the communities mentioned in the annexure thereto belong to the backward classes. No principle can be found in the said notification on which the Government can be said to have acted in making the said selection in determining the socially and educationally backward classes. We repeatedly asked the learned

⁷ AIR 1958 SC 538 Paragraphs 11 and 14

⁹ AIR 1952 SC 75 ¹¹ AIR 1953 SC 404

⁸ AIR 1954 Mad 690

¹⁰ AIR 1952 SC 123

Government Pleader to state before us the basis on which the said classification was made. The learned Government Pleader found some difficulty in answering us and ultimately stated that the basis was 1941 census. In the first place it should be mentioned that the determination of backward classes made in 1959 on the basis of census report of 1941 can hardly be said to be based on any intelligible principle. It would not merely amount to taking judicial notice to say that considerable changes have taken place between 1941 and 1959 and the census report of 1941 cannot be any basis for determination of backward classes in 1959. Even on the basis of 1941 census, if literacy is the test and that, in my opinion, can be the only possible test for determining the educationally backward classes, it would appear that many of the communities having high percentage of literacy have been put into the backward classes, e.g., the Lingayats having an average of 18.8 per cent, Rajputs having 33-1/3 per cent, Vaisyas having 40 per cent, Muslims having 25 per cent and Jains having 33-1/3 per cent of literacy, have been classified as backward. It should be mentioned that the State average of literacy is 13 per cent. Faced with this position the learned Government Pleader had to concede that the literacy was not the test by which the backwardness of the communities concerned was determined. He contended that it is English literacy which was the basis on which the said determination was made. I do not see any reason how and why the English literacy should be the test for making such determination. Even on that basis it would appear that certain communities having lesser percentage of English literacy have been excluded from the said list of backward classes while communities having higher percentage of English literacy have been included in it. To give only one instance, the Sikhs who have been classified as backward classes command 33½ per cent literacy in English. The English literacy of Brahmins who have been excluded as belonging to forward class is 22.4 per cent. The third difficulty in supporting this contention is, that the English literacy test was applied, as admitted before us by the learned Government Pleader, only in respect of the area covered by the old Mysore State. We do not know, and there is nothing to show, what would be the literacy percentage or English literacy percentage of the communities who have been classified as backward if they are considered with reference to the whole of the New Mysore State. The fourth difficulty in the way of the learned Government Pleader is that even though the standard of educationally backward classes may be determined by reference to 1941 census, there is no standard on which the social backwardness of these communities were

determined. The Government notification, as I have already mentioned, says nothing on this point. In the counter affidavit filed by the State no indication has been given as to the basis on which social backwardness of these communities has been determined. The learned Government Pleader could not point out to us any test or principle on which the social backwardness of these communities have been ascertained. It should be mentioned that under the Constitution provision can be made for classes who are "socially and educationally backward". It would not be enough to say that these communities are educationally backward. It will have also to be seen whether they are socially backward. I am satisfied that in determining educationally and socially backward classes the Government did not proceed on any principle and their determination was arbitrary. At this stage I should mention that certain communities, e.g., Vysyas, Mudaliars and Coorgies were not originally included in backward classes. They were subsequently put into the backward classes. Vysayas were put into such backward classes by notification dated 1-7-1959, and the Coorgies by notification dated 2-6-1959. The Mudaliars were thereafter put into backward classes. Mr. Venkataranga Iyengar contended before us, and there is force in his contention, that the fact that the Government at first put these communities as forward communities and subsequently placed them into backward classes shows that the Government did not proceed on any clear cut principle. This contention is further supported by the fact that when the admission to Medical College was made, it was made on the basis of an instruction, issued by the Government in its letter dated 13-8-1959, wherein directions were given to the Selection Committee that in allocating seats in the Medical College as between different communities in the backward classes the Committee should take into account the population of the applicant's communities. Thus, even amongst the backward classes discrimination was made. I am for the moment not considering the question as to how far such discrimination amongst the backward classes is constitutional and what would be the effect of the said instruction. I shall deal with that question hereafter. The importance of this matter for the present purpose is that it shows that there was no clear cut principle on which the Government made its determination as to the backward classes.

27. Having, carefully considered all aspects of this question I have come to the conclusion that the Government in making the classification of socially and educationally backward classes did not proceed on any principle and the said determination was arbitrary. I am also of the opinion that such classification cannot be said to have been made in furtherance of the object which the Constitution sought to achieve, i.e. the amelioration of socially and educationally backward classes.

28. I shall now consider the contention of Mr. Venkataranga Iyengar which is more or less allied to the contention which I have just now dealt with. That contention was that the impugned order of the Government is a fraud on the Constitution. What amounts to a fraud on the Constitution has been considered by their Lordships of the Supreme Court in the case of *State of Bihar v. Kameshwar Singh*¹², S.R. Das J. (as he then was) while dealing with this point laid down as follows :

"The argument, when properly understood, will be found to resolve itself into an attack on the legislative competency of the Bihar Legislature to pass this Act. On ultimate analysis it amounts to nothing more than saying that while pretending to give compensation the Act does not really give it.

* * * *

The failure to comply with this constitutional condition for the exercise of legislative power may be overt or it may be covert. When it is overt, we say the law is obviously bad for non-compliance with the requirements of the Constitution, that is to say, the law is 'ultra vires.' When, however, the non-compliance is covert, we say that it is a fraud on the Constitution, the fraud complained of being that the Legislature pretends to act within its power while in fact it is not so doing. Therefore, the charge of fraud on the Constitution is, on ultimate analysis, nothing but a picturesque, and epigrammatic way of expressing the idea of non-compliance with the terms of the Constitution." The above observations, in my opinion, bring out the real import of what is called fraud on the Constitution. It has to be seen, therefore, whether the

¹² AIR 1952 SC 252 at page 291

Government purporting to act within its powers under Article 15(4) of the Constitution has in fact not done so. In other words, if it is found that by the said notification classes other than socially and educationally backward classes have been benefited, or if it is found that classes who are socially and educationally backward have not been benefited, then also the notification will amount to fraud on the Constitution, as in that event there would in effect be a non-compliance with the terms of the Constitution.

29. At this stage I should mention that in order to amount to a fraud on the Constitution it is not necessary that the Act in question must be a mala fide one or brought into existence with fraudulent intent. A Legislative or Executive action would still amount to fraud on the Constitution if the Legislature or executive purporting to act in compliance with the Constitution has in effect acted, even though innocently, in non-compliance with the terms thereof. It is in this light that the position arising out of the order in question has to be examined. The learned Government Pleader admitted, as he had to do, in the course of his arguments that in the list prepared there are grades of backward classes. In other words, the list has been prepared on the basis of comparative backwardness. This, according to him, explains why the second order had to be passed, which, according to him, was for the purpose of giving benefit to the really backward classes, as otherwise they would be swept away by the comparatively forward classes placed in the list annexed to the first notification and would not be in any way benefited by it. Thus, taken by itself, it is an order which benefits the classes who (even according to the State) are only comparatively backward, i. e. backward as compared to the most forward classes of the State. Taken along with the earlier order it is really a communal award and not a provision made for the socially and educationally backward classes. Neither of the above two positions can be justified by Article 15(4) of the Constitution. Articles 14 and 15(1) and 29(2) of the Constitution make it quite clear that no citizen of India can be discriminated on the grounds of religion, race, caste, sex, place of birth or any of them. Article 15(4), as I have already mentioned, to a very limited extent abridges the fundamental rights which are guaranteed by the Constitution and it is to that limited extent that the State is permitted to make the discrimination. The State, in my opinion, cannot, while purporting to act within that limit, in fact go beyond it and thus infringe the fundamental right which is guaranteed by Article 15. It cannot, while purporting to make a provision for socially and educationally backward classes of citizens, make provision for classes who do not come within that class. Such a conduct would amount to non-compliance with the terms of the Constitution and would be a fraud on the Constitution.

30. I have already mentioned in this judgment that the list of backward classes includes 95 per

cent of the population of the State and all communities and castes of the Hindus other than Brahmins, Banias and Kayasths and all the communities in the State except Anglo-Indians and Parsees have been included within the said list of backward classes. In fact by this notification the State has excluded only a few of the communities, e.g. Brahmins, Kayasthas, Banias, Anglo-Indians and Parsees, from getting the benefit of the seats reserved for all other communities of the State. This, in my opinion, is more a discrimination against the communities who have been excluded and who represent only five per cent of the population of the State than a provision for the backward classes. Besides it is a provision not for socially and educationally backward classes, but for the classes who are comparatively backward to the most forward classes, even if it be assumed that the classes who have been excluded are the most forward classes of the State. This is not what Article 15(4) of the Constitution contemplates. The object of that Article was not to enable the State to make a discrimination against a small section of the population or to permit a provision being made for comparatively backward classes, i.e. classes who, compared to the most forward classes are backward. In my opinion, these are the very things which the Constitution sought to prevent. Such an order, in my opinion, would, therefore, amount to non-compliance with the terms of and a fraud on the Constitution.

31. This question can be looked at from another point of view. If, as I have already mentioned, it is found that the so-called provision for socially and educationally backward classes does not in fact benefit such classes, then also it cannot be justified under Article 15(4) of the Constitution. This was the view taken by their Lordships of the Andhra Pradesh High Court in the case reported in AIR 1958 Andhra Pradesh 129. In my opinion, it is quite clear that this order has not benefited the really backward people. This is amply demonstrated by the fact that in order to protect their interest, that is to say, in order to prevent all the seats being taken away by the comparatively forward classes the Government had to intervene and issue the second order which is also impugned in this application whereby special reservations have been made for the different communities within the backward classes as mentioned in the first order. I shall show when I deal with the second order that by the said order more harm has been done to the backward classes than by the first. They have been restricted only to a very small percentage of the total seats and even in that percentage they have very little chance of getting any of those reserved seats. So far as this order is concerned, the classes who were really backward, socially and educationally, have little chance of competing as against the more forward classes who have been included therein. Thus, in my opinion, the order in question purporting to be for the advancement of the socially and educationally backward classes has in fact given no benefit to them. Such a provision cannot be justified by Article 15(4) of the Constitution.

32. I am, therefore, of the opinion that the above two contentions of Mr. Venkataranga Iyengar should prevail. I am also of the opinion that in substance, if not in form, the present order is a repetition of the earlier order dated 26th July 1958 (Shravana 4, Saka Era 1880) which this Court in W. Ps. 369, 370, 512 etc. of 1958 has quashed. What had been done in the said earlier order was that all communities other than Brahmins were classified as belonging to backward classes. What has been done in the present order is to mention all the different communities of the State except the Brahmins and four other communities, i.e. Anglo Indians, Kayasthas, Banias and Parsees. Thus, besides the Brahmins who were not included in the list of backward classes in the first order four communities have been excluded, viz. Kayasthas, Banias, Anglo Indians and Parsees and on that ground it is possible to contend that the present order is not the same as the previous one. But substantially, to my mind, it is repetition of the previous order. I, however, do

not want to base my decision in these petitions on this ground, as the previous order of this Court was not made on contest but was made on consent of the Advocate-General.

33. I now come to the second notification. In order to have a clear idea of what the said notification purports to do, it would be necessary to set out in extenso the material portions thereof. They are as follows :

"Accordingly, it is hereby, ordered that the various other socially and educationally Backward Classes be grouped as specified in Column 2 of the following Table and the percentage of reservation in respect of each group be as specified in Column (3) of the corresponding entry in respect of each group :

GroupNo.	Classes	Percentage.
1	Bedar Haranshikari Hatkar	2.6
2	Kuruba Kolari Muniyani Dhangar Kuruma Hegde (Coorg)	3.9
3	Lingayats including Jangams and Kuduvokkals	8.5
4	Mahrata Marata Arer Maratha Marati	2.3
5	Vokkaliga including Bhants Raddis Kunchitigas Nadavars Kapus	7.3
6	Muslims including Kasi Qasa Qasab Quarashi Kathargu Labbi Mapilla Pinjara Pinjari	5.6
7	Gangakula including Bestha Meengar Kabvera Mogaveera Ambigaru Bhoi Kabbaligar Gangaputra Boya	1.2
8	Idiga Billava Maliah-Billava Illigar Ediga Eliga	1.3
9	Viswakarma Kammar Kammari Kambar Loharkammara	1.2
10	Indian Christians	1.2
11	i. Agasa Madivala Dhobi Parit	
	ii. Kumabara Kulala Kumbhar Kummar	
	iii. Nayinda Bandari Kelasi Hajam Navaliga Nhavi Nayidaru Napitha	
	iv. Meda Medar Burud Mahendra Kaikadi Pamlor Konchi-Koruva Myadara	
	v. Ganiga Teli	
	vi. Lamani	
	vii. Waddar Wadar and Waddara	2.9
12	i. Darzi Simpi Simpiga	
	ii. Devanga	
	iii. Neygi Jada Nekar Jandra Billimagga Kuruhina Setty	

	iv. Rajput including Ursus	
	v. Satani	
	vi. Thigala	
	vii. Uppara Sagara	
	viii. Yadava Golla Col	3.2
	13. i. Vysya Arya Vysya	
	ii. Banajiga	
	iii. Kodaga (Coorgi)	1.4
14	i. Jains	
	ii. Ambiga Annupa Gounder Asthan Golla Are Maharathi Arya Akkasaliga Sonar Alitkar Atari Ammakodaga Ayri Bairagi Bava Gosavi Bavaji Bhatraju Budubudike Bududkala Bundabesta Boya Badhai Badgi Sutar Bahu roopi Balasanthoshi Beda Berad Naikamakkalu Naikwadi Bhampta Chantichor Bhavasar Bhas-Pakhali Buk kitgar Badiga Balasanthosh Balegara Bhatt Bhat Bhavasar Rangari Banna Chaptogara Chapparaband Doga Dommara Dombari Devadiga Devadasi Nativa. Doddekula Fakir Garadiga Gondaliga Gondhali. Goniga Gosayi Gaur Ghur Gujar Galada Konkani Gowda Gangavar Ghatti Gudigara Garudi Modikar Gavandhi Gavli Gavaliga Ghisadi Girini-Waddar Bhandi-Waddar Ghatti-Waddar Mannu-Wad dar Matti-Waddar Gangettinavaru Gowndala Gowda Gorou Hallkar Hoogar Jetty Jogi Jogar Jatigar Jingar Julaha Momin Laddaf Naddaf Kaniyar Kongu-Chettiar Korach Koteyar Sheregari-Kshatriya Kahar Kalawanthulla Kannadiar Kharvi Kalal Kalawant Kallawaddar Kanchgar Kansara Katabu Kabbaliga Kabberu Kalkutiga Kanchari Kanchugar Kolhati Kolhatni Ladar Maleyali Maravan Multani Male Moili Mulliya Mali Mochi Manigar Nayar Neeli Neelakanti Pandaram Padmasali Sali Salian Swakulasali Parivar Parel Madiwala Parivar-Bunt Poraya Pagi Paknali Panchal Pategar Pendar Patkar Perika Phoolmali Phulari Rachavar Rawat Rajapur Rajapur-Lamani Sadar Saniyar Sikh Siviari Sangtarash Somkshatriya Sutar Wadhai Siddi Tambat Tamboli Tammali Tambatgar Tulleru Thoraya Vajantri Viramushti Dasari Girka Mehtar Mannur Mannurkapu Maleya Nagartha.	2.4

It would appear from the above notification that not only the so-called socially and educationally backward classes, as mentioned in the first notification have been sub-divided into different groups but the percentage of reservation of seats in respect of each group has also been specified. In other words, each group is only entitled to the percentage of seats as specified in respect of that group. Thus, for example, classes belonging to group No. 1 is only entitled to 2.6 per cent of

the seats reserved for backward classes and group 2 is entitled to 3.9 per cent thereof. The result of this is obvious. The persons belonging to one of such groups can only compete for the seats which have been reserved for that group and are not eligible for the remaining seats reserved for the backward classes. In other words, they are debarred from capturing the said remaining seats in open competition amongst the members of the backward classes as enumerated in the first notification. This notification, therefore, instead of giving a benefit to the backward classes abridges their rights and cannot be supported by the provision of Article 15 (4) of the Constitution. As was observed by their Lordships of the Andhra Pradesh High Court in the case reported in AIR 1958 AP 129 that if the provision, though it purports to be for the advancement of the backward classes, in effect abridges their rights, the entire provision or that part of it which abridges their rights would be bad. The net result of this notification is that while purporting to make special provision for the backward classes a discrimination has been made against them. This is certainly not in compliance with the Constitution.

The Constitution guarantees the fundamental right of every citizen whether he is a member of the backward class or not. Such right includes the right to be admitted into any educational institution maintained by the Government irrespective of one's religion, race, caste, sex or any of them. Article 15(4) allows an abridgment of that right. But that abridgment has to be for the benefit of the backward classes. In accordance with that Article special provision can be made for such backward classes, which, in the case of admission to educational institutions, means that a limited number of seats be reserved for them, leaving them free to contest the remaining seats. If, as was observed by their Lordships of the Andhra Pradesh High Court in the case reported in AIR 1958 Andhra Pradesh 569, the boys belonging to the backward classes by their merit secure more than the prescribed seats in the general competition, this rule cannot be invoked to reject the boys above the prescribed number; for, in that event their fundamental right under Article 29(2) would be violated. But the present order has in fact debarred the boys of the different groups from getting any seats above the number of seats prescribed for the backward classes. By doing so, this order, instead of benefiting them has abridged their fundamental right.

34. It was contended before us that in each of the groups one of the forward class has been included. Janis for example, it was shown to us, as having been grouped with large number of backward classes and only 2.4 per cent of the seats have been reserved for the said group. Similarly. Muslims have been classed with number of other classes and the reservation for that group is only 5.6 per cent. It was contended before us and in my opinion, rightly, that the result of grouping in this manner may be that even the limited percentage of seats reserved for the classes mentioned in the said notification would be captured by those communities who are more forward than the others of that group leaving thereby the really backward classes with no chances of getting any seats even in the said small percentage of reserved seats. When this aspect of the matter was put to the learned Government Pleader he tried to justify the action of the Government by saying that unless such sub-divisions were made and special reservations were made for each of such sub-groups the comparatively forward classes in the list set out in the first order would have carried away all the seats reserved for the backward classes and the really backward people would in that event be deprived of any benefit under the said notification. This argument, in my opinion, strikes at the root of the first order. It shows that the said notification was not in compliance with the provisions of Article 15(4) of the Constitution. The contention of the learned Government Pleader that if special reservations were not made for the classes

mentioned in the second notification all the seats reserved for the backward classes would have been taken away by the comparatively forward communities and the really backward classes would not have got any of those seats, shows that the provision made in the first notification was not made for the benefit of really backward classes socially and educationally, but for the benefit of comparatively backward classes, that is to say, the classes who compared to the most forward communities are backward. Such determination, in my opinion, cannot be justified by Article 15(4) of the Constitution. I have already shown that even this object, which, according to the learned Government Pleader, the State wanted to achieve has not been achieved by the second notification. In most of the groups one of the comparatively forward classes has been included and the little percentage of reservation which is fixed for that Class is bound to be carried away by the members of that group. So, from whatever point of view we look into this matter, the second notification cannot be justified by Article 15(4) of the Constitution.

35. I should also mention that both the notifications should be taken together and cannot be dealt with separately from each other. If, as the learned Government Pleader stated before us, the object of the second notification was to guard against the possible consequences that may result from the first and if the second notification is obviously unsustainable, then the first must also be held to be invalid, not being in furtherance of the object which Article 15(4) of the Constitution sought to achieve and not justified by the said Article. Both the notifications must, therefore, be held to be in non-compliance with Article 15(4) of the Constitution.

36. Having reached the above conclusion the question which arises is what is the order we have to pass on these applications. The learned Government Pleader represented to us that selections have already been made. But, as was held by their Lordships of the Andhra Pradesh High Court in the case reported in AIR 1958 Andhra Pradesh 129 the fact that selections have been made cannot affect the rights of the petitioners. They have to be considered without any reference to the orders impugned, in these petitions.

37. Before concluding my judgment I should make it clear that the students who have been already selected and have been admitted into the Colleges will not be affected by this order. They are not parties to these writ petitions and this Court did not give any interim stay in matters of selection of candidates to Colleges. In this respect I am taking the same view as was taken by their Lordships of the Andhra Pradesh High Court in the case referred to in the above paragraph.

38. I also want to make it clear that the reservation made for the Scheduled Castes and Scheduled Tribes in the first notification will not be affected by this order. The reservation made for them will stand.

39. There will, therefore, be an order that the applications of the petitioners be considered without any reference to the orders impugned in these petitions but subject to the reservations for the Scheduled Castes and Scheduled Tribes made therein. If on such consideration it is found that they would have been admitted then provision be made in the Colleges, if necessary, even by creating additional seats for that purpose. Each party will bear and pay its own costs.

Hombe Gowda, J.

40. I agree.

Order accordingly.