

MYSORE HIGH COURT

S.A. Partha

Vs

State of Mysore

Writ Petition No. 782 of 1960 connected with Writ Petns. No.s. 782, 788, 794, 805, 808, 844, 845, 867, 870, 880, 881, 886, 961, 964, 983, 1018, 1039, 1041, 1077, 1149 of 1960 and 818, 819, 820, 841, 883, 910, 951, 954, 955, 962, 965, 994 to 1000, 1009, 1010, 1011, 1040, 1042, 1058, 1069, 1101, 1105, 1113, 1173 and 1295 of 1960

(A. Narayana Pai and Mir Iqbal Husain, JJ.)

16.01.1961

JUDGMENT

A. Narayana Pai. J.

1. These fifty Writ Petitions have been heard together because they raise common questions in regard to the principles on which and the manner in which admissions were made into Professional and Technical Colleges in the State for the academic year 1960-61. The petitioners complain that both the principles and the Procedure followed infringed or abridge their fundamental rights guaranteed under Articles 14, 15 and 29 of the Constitution, and claim that they would otherwise have secured admission.

2. Twenty out of these petitions, viz., W. P. Nos 782, 788, 794, 805, 806, 844, 845, 867, 870, 880, 881, 886, 961, 964, 983, 1018, 1039, 1041, 1077 and 1149 of 1960, relate to Medical Colleges and the remaining thirty, viz., 818, 819, 820, 841, 883, 910, 951, 954, 955, 962, 965, 994, 995, 996, 997, 998, 999, 1000, 1009, 1010, 1011, 1040, 1042, 1058, 1069, 1101, 1105, 1113, 1173 and 1295 of 1960 relate to Engineering Colleges in the State.

3. The State Government maintains three Medical Colleges, one at Bangalore, the second at Mysore and the third at Hubli, the first two of which are affiliated to the University of Mysore and the third to the Karnatak University.

4. Among the Engineering Colleges or Institutions, we are concerned in these Petitions with five of them, the Engineering Colleges at Bangalore maintained by the University of Mysore, the B. D. T. College of Engineering at Davangere maintained by the State Government, and three private Institutions, viz., The B. M. S. College of Engineering at Bangalore, the National Institute of Engineering at Mysore and the Bhooma Reddy College of Engineering at Hubli. The B. D. T. College, Davangere, the B.M.S. College, Bangalore and the National Institute of Engineering,

Mysore, are affiliated to the University of Mysore, and the Bhooma Reddy College at Hubli is affiliated to the Karnatak University.

5. Both the Universities have made Rules or Regulations in respect of the eligibility of students seeking admissions in courses of study leading to conferment of Degrees in Medicine and Engineering.

6. In respect of the Pre-Professional Course in Medicine leading to the conferment of Degree therein, the Mysore University Rules provide that no student shall be permitted to study for the said Course unless he has passed the Higher Secondary Examination of the Mysore Secondary Education Board or any other examination recognised by the Mysore University as equivalent thereto, subject to approval of the University Syndicate in the latter case or the Pre-University Examination; and as a transitory measure, it is provided that students who have passed the Pre-University Examination with not fewer than any two of the following subjects, viz., Physics, Chemistry, Botany, Zoology or Biology, as their optional subjects of study of Mysore University or equivalent examinations of any other University, subject in the latter case to the approval of the University Syndicate, are eligible for admissions into the Pre-Professional Course in Medicine. The corresponding Rule of the Karnatak University is that no student shall be eligible for admission to the Pre-Professional Course in Medicine unless he has passed the Pre-University Examination in Science in the subjects mentioned in the eligibility group, viz., Physics, Chemistry and Biology of the Karnatak University or equivalent examination from other Universities, the latter being subject to the production of Certificate of Eligibility issued by the Registrar of the Karnatak University.

7. In respect of the Engineering Course, the relevant Rule in both the Universities is that no student shall be permitted to study the pre-Professional Course in Engineering unless he has passed the Pre-University Examination with physics, Chemistry, and Mathematics of the University in question or of any other University equivalent thereto, and recognized by the said University.

8. Before the introduction of the Pre-University Course and Examination, the Engineering Degree Course was of a duration of four years and those who had passed the Intermediate Examination in Science were eligible. After the introduction of the Pre-University Course, the Degree Course in Engineering now occupies a period of five years and is called the integrated course of five years. As a transitory measure, it is provided that students, who have passed the Intermediate Examination in Science of the First Part of the Degree Course of Bachelor of Science, may be admitted directly into the Second year of the Five Years Integrated Course of Engineering.

9. In June 1960, the Government of Mysore passed two Orders (hereinafter referred to as the impugned Orders) providing for reservation of seats in Professional and Technical Institutions or Colleges in favor of Scheduled Castes and Scheduled Tribes and other socially and educationally Backward Classes in the State.

10. Order No LLH 218 MMC 60 dated the 20th June 1960 relating to Medical and Dental Colleges reads as follows :

"Government in their Order No. P and D 64 OBC, 58 dated the 8th January 1960, constituted a Committee under the Chairmanship of Dr. Nagaa Gowda, M. L. A., for determining the criteria for the classification of the Backward Classes in the State, both for the purpose of admissions to Technical and Professional Colleges and institutions and also appointments to Government Service. In order to meet the situation arising out of holding up of recruitment to different classes of service, the committee was requested to send an interim report and the Committee accordingly, sent a report. The Committee in its interim report has prepared a provisional list of other Backward Classes in order to enable Government to fill up the existing vacancies in the Services of the State.

2. Government have accepted the list prepared by the said Committee and have in their Order No. GAP 7 ORR 60, dated the 1st March 1960, directed that the various Communities mentioned in the Appendix to the said Government Order, should be considered as other Backward Classes for the purpose of recruitment to the Services of the State.

3. The Committee, while considering who should be classified as other Backward Classes not adequately represented in the services under the State for the purpose of Article 16(4) of the Constitution, has considered which classes are socially and educationally Backward Classes. The Committee considered whether the classification based on varnas, the traditional occupations or the income could be the criterion for holding people of any community as a Backward Class of citizens and decided that Backward Classes should be listed only on the basis of their caste or community and their backwardness judged on the basis of percentage of literacy in the community and their representation in Government Service.

4. A decision as to who should be classified as socially and educationally backward Classes, for the purpose of Article 15(4) of the Constitution in respect of admissions to the Government Dental and Medical Colleges in the State is to be taken immediately. It is understood that the final report of the Committee will not be available till about the middle of July 1960. In the circumstances, Government consider it necessary to act on the material available; and accordingly accept the communities referred to in the Statements VIII and IX annexed to the Interim Report of the Committee, as socially and educationally Backward Classes for the aforesaid Purpose, pending receipt of a final report from the Committee.

5. It is, therefore, directed in supersession of the Government Orders No. ED 79 TGL 59 dated the 14th May 1959 and the 22nd July 1959, that the Classes, referred to in the Annexure be treated as other socially and educationally backward classes for the Purpose of admission to the Government Dental and Medical Colleges in the State.

6. It is further ordered in supersession of the two Government Orders referred to in Para 5 above, that the reservation of seats in the Government Dental and Medical Colleges shall be as follows, namely, 15 (fifteen) per cent for Scheduled Castes, 3 (Three) Per cent for Scheduled Tribes and 22 (twenty two) per cent for candidates belonging to other Backward Classes, the selections from the Scheduled Castes, Scheduled Tribes and other Backward Classes being based on merit as among the candidates belonging to the said Castes, Tribes and Classes respectively. The remaining 60 (sixty) per cent of seats shall be filled up by selection of the candidates on the basis

of merit, irrespective of the Caste, Tribe or Class to which they belong. If any seat or seats reserved for candidates belonging to the Scheduled Castes or the Scheduled Tribes remain unfilled, the same shall be filled by candidates of other Backward Classes."

11. In the Order No. ED. 60 TGL 60 dated 9th June 1960 relating to Technical Colleges and Institutions in the State, the first three paragraphs are the same as in the Order already copied; the rest of it reads as follows :

"4. The Technical Colleges and Institutions are all re-opening after summer vacation very shortly and a decision as to who should be classified as specially aid educationally Backward Classes, for the purpose of Article 15(4) of the Constitution is to be taken immediately. It is understood that the final report of the Committee will not be available till about the middle of July 1960. In the circumstances, Government consider it necessary to act on the material available and accordingly accept the communities referred to the statements VIII and IX annexed to the Interim Report of the Committee, as socially and educationally Backward Classes for the aforesaid Purpose, pending receipt of a final report from the Committee.

5. It is, therefore, in supersession of the Government Order No. ED 79 TGL 59 dated the 14th May 1959 and the 22nd July 1959 that the Glasses referred to in the Annexure be treated as other socially and educationally Backward Classes for the purpose of admission to Technical Colleges and Institutions in the State.

6. It is further ordered in supersession of the two Government Orders referred to in para 5 above, that the reservation of seats in Technical Colleges and Institutions shall be as follows, namely, 15 (fifteen) per cent for scheduled Castes, 3 (three) per cent for Scheduled Tribes and 22 (twenty two) per cent for Candidates belonging to other Backward Classes, the selection from the Scheduled' Castes, Scheduled Tribes and other Backward Classes being based on merit as among the candidates belonging to the said castes, tribes and classes respectively. The remaining 60 (sixty) per Cent of seats shall be filled up by selection of candidates on the basis of merit irrespective of the Caste, Tribe or Class to which they belong. If any seat or seats reserved for candidates belonging to the Scheduled Castes or the Scheduled Tribes remain unfilled, the same shall be filled by candidates of other Backward Classes."

The list of socially and educationally Backward Classes other than the Scheduled Castes and Scheduled Tribes annexed to both these Orders is the same. That reads as follows :

"1. Agasa, Madivala, Sakala, Dhobi, Parit, Rajaka.

2. Eedaru, Nayak (Naik), Boya, Vedan, Bendar, Berad, Valmiki, Talwar, Haickmakkalu, Naikwadi, Palayagar.

3. Gangakula, Besta, Ambiga, Thoreya, Bhoi, Kabhaligar, Siviyar, Kharvi. Kabbera, Kabbera, Kabbili, Bundabestha, Meengar, Mogaveera, Galadakonkani, Parivar, Bhisti, Pakali, Gangavar, Kahar.

4. Ganiga, Teli, Vanian, Gandla.

5. Idiga, Halepaik, Billava, Malayali-Billavas of South Kanara District, Eadiga, Goundla, Kalal, Eliga, Deevras.
6. Kambara, Kummara, Kumbhar, Kulala Gatti, Moolya.
7. Kuruba, Kuramban, Dhangar, Kurub. Gorava, Kurumba, Kuruma, Koleri, Kolari, Muniyani, Hegde of Coorg and South Kanara Districts, Kudubi, Halamatha.
8. Meda, Gauriga, Burud, Medari, Barakala, Kaikadi, Medara, Medarlu, Mahendra, Famler, Mayadara.
9. Nayinda, Hajam, Bandari, Ambathan, Mangala, Nhavi, Nadig, Kelasi, Parel-Madivala, Nayidaru, Napitha, Navaliga.
10. Thigala, Dharmaraja, Kapu, Vannikula, Palli, Yerukala, Mali, Phulmali, Phulari, Hoogar, Bukkitgar, Gaur, Thamboli, Thammali,
11. Uppara, Uppiliyan, Sagar, Beldar, Gavandi, Goundi.
12. Vokkaliga, Hallikar, Kunchatiga, Gowda, Kapu, Kamma, Velama, Reddy, Halakkivokkal, Mannur-Kapu, Tulleru.
13. Yadava, Golla, Adavi Golla, Gowli, Yadav, Gavli, Asthan Golla, Gavaliga, Kannadiar.
14. Devadiga, Moili, Kittari, Budubuduke, Budubudukala, Bhatraju, Gondaliga, Gondali, Gangethinavaru, Jogi, Jogar, Kaiiyar, Manigar, Dasari, Pandara, Patkar, Byragi, Dombara, Dommara, Dombari, Garudi, Garudjga, Modikar, Jatti, Katabu, Kolhati, Kolhatigi, Rachevar, Veeramusti, Kalawantula, Koteyar, Sheregar, Male, Vajantri, Balasanthosi, Natuva, Devadasi, Devli, Bandi, Padiyar, Siddis of North Kanara District."

12. In addition, the Government proceeded to appoint Committees for making selections out of the candidates for admission to the several Colleges and issued certain instructions indicating the principles to be followed in making the selections.

13. By Order No. LLH 174 MMC 60 dated the 31st May 1960, the Government appointed a Committee consisting of the Principals of the Medical Colleges at Bangalore and Mysore, the Dean of the Karnatak Medical College at Hubli and the Superintendent, Minto Ophthalmic Hospital at Bangalore, with the first named as its Chairman for the selection of candidates for admission to all the three Government Medical Colleges at Mysore, Bangalore and Hubli for the year 1960-61. By Order No. LLH 217 MMC 60 dated the 20th June, 1960, the Government directed that the following Rules be adopted for selection of Candidates for seats in Government Medical Colleges :

"(i) Reservation of seats for Scheduled Castes, Scheduled Tribes and other Backward Communities will be according to the Government Order No. LLH 216 MMC 60 dated

20-6-1960 ;

(ii) In the selection of candidates, the Committee will be required to make their selection on the basis of merit as disclosed by marks obtained in the Optional Subjects only in the qualifying examination, modified by the next provision; and

(iii) Ten per cent of the maximum marks for the Optional Subjects will be allotted for general ability and aptitude and for extra-curricular activities, like Sports, N. C. C., Scouting, Social Service and General Physical condition and endurance. The total of the marks obtained including the Optional Subjects and those allotted for general ability and extra-curricular activities as mentioned above will form the basis for ranking on merit and the Committee will make selection accordingly and forward its recommendations to Government for approval."

In respect of the Government, University and private Engineering Colleges in the State, the Government under Order No. ED 319 TOI 57 dated 10th June, 1960, appointed two Committees of Selection, one for the Engineering Colleges in the jurisdiction of the Mysore University and the other for the Engineering Colleges in the jurisdiction of the Karnataka University. The first consisted of the Vice-Chancellor of the Mysore University as the Chairman, and the Director of Technical Education in Mysore and the Principals of the University College of Engineering, Bangalore, the B. M. S. College of Engineering, Bangalore, the National Institute of Engineering, Mysore and the B. D. T. College of Engineering, Davangere, as Members. The second consisted of the Vice-Chancellor of the Karnataka University as the Chairman, and the Director Of Technical Education, in Mysore and the Principals of the B. V. B. College of Engineering, Hubli and the College of Engineering, Gulbarga as Members. By the same order, it was directed that all the seats available in all these Colleges excluding the number of seats reserved to be filled in by the Managements concerned in respect of the Private Colleges, shall be pooled together and in respect of the same, selections shall be made by the respective Committees by adhering to the reservation of seats for the Scheduled Castes, Scheduled Tribes and other Backward Classes as prescribed by the Government and by interviewing candidates. A maximum of 20 marks was fixed as Interview Marks to be awarded by the Selection Committee for assessing the suitability of the candidates for the Engineering profession, having regard to the following factors, viz., (i) Aptitude, (ii) General ability and Physical fitness, (iii) Sports or N. C. C. activities or Scouting or other similar activities, (iv) Extra-Curricular activities, such as Social Service, etc. After making the selection, the Committee was empowered to allot candidates to the respective Colleges following, as far as practicable, the preferences indicated by the applicants. In view of the fact that the total of the maximum number of marks for Optional Subjects at the several qualifying examinations was different, the Committee appears to have entertained some doubts as to the exact meaning of the provision that the Interview Marks should be a maximum of 20. The Government on being addressed by the Committee to clarify the position, replied by their letter No ED 319 TOI 57 dated the 26th June, 1960, stating that the question as to whether the total number of marks obtained by each candidate in the qualifying examination should or should not be reduced to a case of 100 while adding the marks of the interview out of 20. is entirely left to the discretion of the Selection Committee. Hence the Selection Committee assessed the merit of the applicants on the basis of the total marks secured by the students in the Optional Group in the several examinations by reducing the maximum marks to a case of 100, and marks allotted at the interview out of a maximum of 20 marks.

14. Although the Government Purported to appoint Committees in respect of all Institutions, - University, Government or Private - one of the Institutions, viz., the National Institute of Engineering at Mysore declined to act on the basis of those Government instructions. The Governing Body of the Institute adopted a resolution on 5-7-1960 declining to join the common Selection Committee and Protesting against the allowing of discretion to add 20 marks at interview and appointed a Committee consisting of –

(1) Shri N. Neelakantappa, Retired Chief Engineer, Mysore P. W. D. and President of the Governing Body, Mysore.

(2) The Principal of the Institute,

and

(3) Shri H.R. Janardhana Iyengar, an elected Member of the Governing Council, Mysore to select students for admission into the Institute. Out of the 120 seats available at the Institute, 96 (i.e. 80 per cent) had to be distributed according to the directions of the University and the Government, and the remaining 24 (i.e. 20 percent) being at the discretion of the Institute. 60 percent of these 96 seats, i.e. 58 seats in all, were allotted to candidates strictly in accordance with the marks obtained by them at the qualifying examinations without prescribing any additional tests. In respect of the 40 per cent of the 96 seats, i.e. 38 seats, the Selection Committee of the Institute followed the Government Order No. ED 60 TGL 60 dated the 9th June, 1960, and in filling those seats, they adhered strictly to the percentage of marks obtained by the candidates at the qualifying examinations. As none of the candidates belonging to the Scheduled Castes and Scheduled Tribes took up the seats allotted to them, all the lapsed seats were added to the Backward Classes Pool in accordance with the instructions contained in the Government Order.

15. The Selection Committee appointed by the Government in respect of the Medical Colleges considered separately the applications relating to Bangalore and Mysore Colleges falling within the jurisdiction of the Mysore University and the applications relating to the Hubli Medical College falling within the Jurisdiction of the Karnataka University. Each of the first two Colleges had an accommodation of 150 seats. Out of the total of 300 such seats, 7 seats were reserved for nominees of the Donors in accordance with the Rules prevailing before the Government took over the Bangalore Medical College and to the nomination of the Government of India under the Colombo Plan. Out of the remaining 293 seats, 175 were filled up on the basis of merit according to the Government Order, 52 seats were reserved for Scheduled Castes and Scheduled Tribes and 66 for other Backward Classes; as, however, there were not sufficient number of qualified applicants belonging to the Scheduled Castes and Scheduled Tribes, 19 of the seats reserved for them which remained unfilled, were added to the number available to the Backward Classes; thus, the Backward Classes had a total of 85 seats. At the Karnataka Medical College at Hubli, there were 120 seats. The exact manner in which, these seats were dealt with does not appear from any of the affidavits filed on behalf of the respondents; but, the affidavit of the petitioner in

W. P. 788 of 1960 discloses that 72 seats being the 60 per Cent of the total were set apart for general competition on merit and that out of the remaining 48 reserved seats, only 36 applications having been received in respect of them, the surplus of 12 seats was added to the general pool, thus making a total of 84 seats available for open competition.

16. In the consolidated counter-affidavit filed in respect of the 20 Writ Petitions relating to Medical Colleges by the Chairman of the Selection Committee, the general procedure followed by the Committee in making the selection is described. It will be remembered that whereas the Karnataka University prescribes Physics, Chemistry and Biology as the Eligibility Group of Subjects, the Mysore University prescribes the combination of two subjects of the several named subjects, viz., Physics, Chemistry, Botany, Zoology or Biology, as sufficient for eligibility. The Selection Committee took the view that out of the several combinations of subjects, that consisting of Physics, Chemistry and Biology was the most suited for admission into the Medical Course. The other groups in the order of Preference were Chemistry, Botany and Zoology; Physics, Chemistry and Mathematics; and Chemistry, Botany and Geology. In this view, they thought it proper to allot the largest number of seats to the first of the combinations, viz., Physics, Chemistry and Biology. On this basis, they made the following selections in respect of Medical Colleges in the jurisdiction of the Mysore University :

	Subject Group.	No. selected.	
		Merit.	Backward.
	1	2	3
I.	Pre-University Examination of Mysore and Karnatak Universities.		
	(a) Physics Chemistry and Biology.	98	14
	(b) Chemistry, Botany and Zoology.	65	26
	(c) Physics, Chemistry and Mathematics.	3	40
	(d) Chemistry, Botany and Geology.	1	0
II.	Pre-University Examination of other Universities.	1	2
III.	Intermediate in Science and B.Sc. (Part I) of Karnatak University.	4	2
IV.	B Sc. Degree	2	0
V.	Senior Cambridge	1	0
VI.	Higher Secondary Examination	0	1

	of Coorg.		
	Total ...	175	85

According to the Government instructions, the interview marks in respect of this selection were to be in the order of 10 per cent of maximum marks in the Optional Subjects. Wherever such marks exceeded 300, the Committee reduced the marks secured by the student down, to a base of 300. On this basis, they had a uniform maximum of 30 marks for interview.

17. 210 students were admitted to the University Engineering College, Bangalore, and 120 into each of the other two Colleges, viz., The B. M. S. College, Bangalore, and the B. D. T. College, Davangere. Out of the 120 seats available in the B. M. S. College, 20 per cent of the seats i.e., 24 in all, were left to be filled by the Management of the College, the Committee selecting candidates only for the remaining 96 seats. Likewise, 2 seats were reserved for nomination by the Donor of the B. D. T. College, Davangere. Thus, 424 students in all were selected by the Committee for admission into these three Colleges for the first year of the five years integration course. According to the Government Order, 76 seats were reserved for the Scheduled Castes and Scheduled Tribes and 94 for the other Backward Classes.

Since, however, there were only 68 eligible persons among those belonging to the Scheduled Castes and Scheduled Tribes, the surplus 8 seats were added to those reserved for Backward Classes making a total of 102 seats available to those Classes. The remaining 254 seats were made available for open competition on merit. For admission, into the Second Year Class, the Committee admitted into the B. M. S. College 126 students who had passed the Intermediate Examination, in Science or the B. Sc. Examination, after excluding 12 seats available for admission by the Management on their discretion. Here again, 22 seats were reserved for Scheduled Castes and Scheduled Tribes and 28 for the other Backward Classes leaving the remaining 76 for open competition on merit since, however, there were only two eligible candidates among the Scheduled Castes and Scheduled Tribes, the remaining 20 seats went to the benefit of the other Backward Classes, making available to them a total of 48 seats.

18. In the consolidated counter-affidavit filed in respect of the batch of Writ Petitions relating to the Engineering Colleges by the Secretary of the Selection Committee, it is stated that the relative merits of the applicants were considered in three distinct and different Pools, viz., the merit pool, the Backward Classes Pool and the Scheduled Castes and Scheduled Tribes pool. Though, it is not clearly stated either in this counter-affidavit or the other one filed in respect of the Writ Petitions relating to the Medical Colleges, the learned Advocate-General has told us that all the Committees first made a selection in the merit pool from out of the applicants belonging to all castes or classes and thereafter selected candidates from Backward Classes to the extent of 22 per cent of the total number of seats, without taking into consideration the number of seats obtained by members of the Backward Classes in the merit Pool. In addition, they were selected to fill the surplus seats transferred from the Scheduled Castes and Scheduled Tribes pool to the Backward Classes pool.

19. The petitioners assailed both the impugned orders providing for reservation of seats in favor of Backward Classes as well as the procedure followed by the Selection Committees. The attacks against the impugned orders are primarily based on the alleged infringement of relevant

provisions of the Constitution of India. The attacks against the procedure adopted by the Selection Committees are based primarily on allegations of mala fides arbitrariness and whimsicality, although some attempt was made to suggest that the procedure also constituted an infringement of equality of opportunity and treatment guaranteed by the Constitution.

20. Although in a couple of Cases the Prayer is for the issue of a Writ of Mandamus directing the admission of the petitioner into a particular College, the general or the principal prayers worded more or less in identical terms in all the Petitions, are for the issue of a Writ of Certiorari quashing the impugned orders of the Government and for the issue of a Writ of Mandamus directing consideration of the applications of these several petitioners, without reference to the said impugned orders and without imposing any further tests in addition to the performance of the petitioners at the several qualifying examinations taken by them. It may, however, be noted that none of the petitioners has sought to challenge the reservation made in the impugned orders in favor of Scheduled Castes and Scheduled Tribes; the attack is limited to reservation of seats made in favor of Backward Classes only.

21. Thus the two principal questions that arise for consideration in these Writ Petitions are (1) Are the impugned orders of the Government making a reservation of seats in Professional and Technical Colleges in favor of Backward Classes other than Scheduled Castes and Scheduled Tribes unconstitutional, and if so, to what extent and in what respects; and (2) Whether the procedure adopted by the Selection Committees, particularly in the matter of adding what is described as 'interview marks' was mala fide, arbitrary or whimsical ?

22. There are certain other points peculiar to particular cases raised in some of the petitions. These may be conveniently dealt with at a later stage of this judgment.

23. In support of the case of unconstitutionality of the impugned orders, what is contended for on behalf of the petitioners is briefly this. Reservation in favor of Backward Classes of the type sought to be made in the impugned orders of the Government can be justified only as a special provision for the advancement of socially and educationally Backward Classes of citizens, within the meaning of Clause (4) of Article 15 of the Constitution. The said clause, according to the learned counsel for the Petitioners, is merely in the nature of an exception to the fundamental rights guaranteed under Articles 15 and 29(2) of the Constitution. A special provision of such a character can be justified only if it is within the strict limits of the exception; if, however, that provision exceeds the ambit of the exception and operates either to abridge or take away the aforesaid fundamental rights, it will have to be struck down as unconstitutional. Although it is conceded that having regard to a prior Bench ruling of this Court (to which a reference will be made later) the classification of a community or caste as educationally and socially backward may not be open to attack by reason only of the fact that the classification is based on castes or communities, it is strongly argued that what the impugned orders in effect or in actual operation amount to is to favor certain communities or castes as against certain other communities or Castes and that this would be apparent if one examines the manner in which the Government dealt with this topic during the last 2 or 3 years. It is further argued that the criterion adopted by the Government while making the classification in question is neither proper nor reasonably connected with the object to be achieved. Even if the criterion adopted may be said to be not unreasonable, the data on the strength of which the Government have Purported to apply that criterion for making the classification, is incomplete, misleading, illusory and in certain respects

purely speculative.

24. Another argument against the impugned orders is one that questions the competency of the State Government to make any such orders. The conditions or qualifications for securing admission into any of the courses of study at the University are, it is argued, matters which could Properly be prescribed by the University itself which under the relevant Statutes functions as an autonomous body. Under Section 51 of the Mysore University Act of 1956, it is for the Chancellor of the University by rules to make special Provisions for the educational advancement of students belonging to any socially and educationally Backward Class, the Scheduled Castes and the Scheduled Tribes. The State Legislature having thus by a Statute provided a machinery for the making of all special provisions for the advancement of Backward Classes, the field must be taken to have been occupied by the Legislature and therefore the Executive Government has no longer any Power to function within that field.

25. Besides these general arguments, one particular attack is against the provision made in the impugned orders for giving to the Backward Classes in addition to the 22 per Cent reservation in their favor, the benefit of that part of reservation in favor of Scheduled Castes and Scheduled Tribes not actually taken up by the latter. This, it is contended, will amount to a clear infringement of the fundamental rights under Articles 15 and 29(2) of the Constitution, even though the classification of certain communities as backward may not be open to attack.

26. It will be convenient first to deal with the arguments based on Section 51 of the Mysore University Act. It is common ground that this argument does not apply to the Karnataka University or Colleges coming within the jurisdiction of that University. It is also common ground that the Chancellor has made no rules under the above Section making any special provision for the advancement of the Scheduled Castes and Scheduled Tribes or other Backward Classes. Among the Col-legos falling within the jurisdiction of the Mysore University, it is admitted that the only College which is maintained and run by the University is the Engineering College at Bangalore. All other Colleges are either maintained by the State or are in receipt of aid from the funds of the State. From the point of view of the University, those colleges are in the Position of affiliated Colleges. Now, the subject of affiliation is dealt with in Chapter VI-A of the Mysore University Act and Section 44-A therein deals with the conditions which have to be satisfied by a College before it can secure affiliation to the University. Those conditions do not include any which provides that the affiliated Colleges shall obey or observe rules, if any, made by the Chancellor of the University under Section 51 of the Act, nor is there any other provision of law requiring or obliging the affiliated Colleges to do so. It cannot, therefore, be said that the State has no competence to make orders of the type impugned in these petitions to govern admissions to be made into these Colleges. So far as the University College of Engineering at Bangalore is concerned, we find both the Vice-Chancellor of the University and the Principal of the College are Members of the Selection Committee and have applied the impugned orders of the Government in respect of the admissions made into that College also. In these circumstances and in the absence of any rules made by the Chancellor under Section 51 of the Act, it is to be held that the University authorities in charge of the Engineering College at Bangalore maintained by the University, have adopted and acted upon the impugned orders of the Government. Hence the objection raised on behalf of the petitioners on the basis of Section 51 is not available.

27. The orders of the Government impugned in these petitions are not the first of their kind made

by the Government for the benefit of the Backward Classes of citizens in the State. In 1958, the State Government made an order directing that all Communities and Castes in the State excluding only the Brahmin Community, should be treated as socially and educationally Backward Classes for the purpose of admission into the Educational Institutions maintained by the State or receiving aid from the State Funds. This order was challenged in Writ Petitions filed before the Court and this Court struck it down as unconstitutional with hardly any opposition on behalf of the State. For the academic year 1959-60 the Government made two fresh orders. One of them gave a list of 164 communities described as socially and educationally Backward Classes and made a reservation of 45 per cent of the available seats in Technical and Professional Colleges in their favor, besides a similar reservation of 20 per cent in favor of Scheduled Castes and Scheduled Tribes, leaving the remaining 35 per cent of the seats to be filled up on the basis of merit. The second order divided the said 164 communities or castes into 14 different groups and distributed the 45 per cent of the seats reserved for Backward Classes between these various groups ranging from 1.2 percent in favor of Indian-Christians to 8.5 per cent in favor of Lingayats. These 164 communities represented nearly 95 per cent of the total Population of the State excluding the Scheduled Castes and Scheduled Tribes.

28. The last-mentioned two orders were once again challenged as unconstitutional before this Court in W. Ps. 567, 572, 574, and 575 of 1959. The judgment of this Court is reported in *Ramakrishna Singh v. State of Mysore*¹, Two of the arguments advanced in support of those Writ Petitions were rejected by the Bench of this Court which decided those cases, namely, that the President of India alone has under the Constitution the power to declare which classes of citizens are socially and educationally backward and that the 'State' under Article 15(4) of the Constitution can mean only the legislature of the State and not the executive Government. These are not pressed before us. The Bench also rejected another argument to the effect that the use of the word 'classes' in Clause (4) of Article 15 and of the word 'caste' in Clauses (1) and (2) of the same Article indicates that backward classes can never be described or ascertained on the basis of castes. The learned Chief Justice delivering the judgment of the Bench observed :-

"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.'

The principal ground on which those orders were struck down as unconstitutional by this Court, was that the classification made by the Government did not rest on any intelligible principle. The order itself contained no statement of any such principle followed by the Government; nor was the Government Pleader appearing on behalf of the State in position to point out on what basis or upon what principles the Government had proceeded in making the classification impugned in that Case.

An attempt appears to have been made by the learned Government Pleader to meet the difficulty by stating that the basis was furnished by the 1941 Census. After observing that the Census Report of 1941 could hardly be the basis for a classification made in 1959, the learned Chief Justice observed :

"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." It was further held that the said second order making a further subdivision, in effect, abridged the rights of the really backward classes by the comparatively forward classes grouped along with them depriving them of the benefits sought to be given to them by the order. Considering all these aspects, the ultimate conclusion of the Bench was that what purported to be a classification of certain Classes of citizens as socially and educationally backward was, in actual event, a communal award and therefore constituted what in law is called fraud on the Constitution.

29. The above judgment was delivered on the 18th of September 1959. On the 8th of January 1960, the State Government constituted a Committee with Dr. R. Nagan Gowda, M.L.A., as Chairman and made the following terms of reference to the same :

¹1960-38 Mys LJ 652 : AIR 1960 Mys 338

"(1) To suggest the criteria to be adopted in determining which Sections of the people in the State should be treated as socially and educationally backward;
(2) To suggest the exact manner in which the criteria thus indicated should be followed to enable the State Government to determine the persons, who should secure such preference, as may be determined by Government, in respect of admissions to Technical Institutions and appointments to Government Services."

The Committee was requested to submit a report as early as possible and was also requested to make an Interim Report very early on the question of reservation in Government services for Backward Classes, to enable the Government to determine quickly the classes of persons who should secure preference, in respect of appointments to Government Service Such an Interim Report was made by the Committee on the 19th of February, 1960 expressly for the purpose of enabling the Government to determine the classes of persons for preference in respect of Government appointments. The impugned orders already set out in full by its, indicate that the said orders were based on this Interim Report of the Backward Classes Committee. An examination, therefore, of the constitutionality or otherwise of the impugned orders necessarily involves an examination of the principles discussed and the criteria formulated by the said Committee and the manner in which it attempted to apply those criteria for determining the socially and educationally backward classes of citizens in the State.

30. Before doing so, it is necessary briefly to refer to the relevant provisions of the Constitution bearing on the question.

31. The learned Advocate-General opened his arguments in support of the impugned orders by calling attention to what he described as the great anxiety evident in the Constitution of our Country for the advancement of the weaker classes of citizens. He referred to Article 46 contained in Part IV of the Constitution dealing with Directive Principles of State Policy which requires that the State shall provide for the education and social advancement of the weaker classes of people and protect them from social injustice and all forms of exploitation. He referred

to Part XVI of the Constitution comprising Articles 338 to 342, containing special provisions relating to certain Classes, specially made in the Constitution for the assistance and advancement of those Classes. He laid particular emphasis on the fact that, among the four guiding principles of the Constitution stated in its Preamble, the first is Justice, social, economic and political. According to him, these are sufficient indications contained in the Constitution itself of the principles which the Constitution makers placed before themselves and which should guide all those that are in charge of the governance of the Country. On the other hand, the learned counsel on behalf of the petitioners before us, while not controverting the general suggestion contained in the argument of the learned Advocate-General, contended that what may be described as the real spirit of the Constitution is the equality of status and opportunity, and the abolition of all distinctions and discriminations on the ground of caste, class and religion. In reply, the learned Advocate-General called attention to the observations of the Supreme Court of India in some cases about the danger of pursuing what is vaguely described as the spirit of the Constitution in preference to the express intentions which can be gathered from the language used in the Constitution.

32. Actually, any such search for the spirit of the Constitution is not called for in this case, because the emphasis, which the Constitution itself places on the several principles set out in the Preamble, is sufficiently clear from the manner in which those have been dealt with in Particular provisions of the Constitution Whereas equality of status and opportunity and liberty of thought, expression, belief, faith and worship are given effect to in Part III dealing with the Fundamental Rights, the ideas of social and economic, justice are provided for in Part IV under the heading "Directive Principles of State Policy." Whereas Article 13 Provides that the State shall not make any law which takes away or abridges any of the fundamental right conferred by Part III, and the enforcement of those rights is itself made a fundamental right under Article 32, Article 37 distinctly states that the provisions contained in Part IV shall not be enforceable by any Court though it declares that the said principles are fundamental in the governance of the Country and places on the State the duty of applying those principles while making laws. The Supreme Court in its judgment in *State of Madras v. Sm. Champakanj Dorairajan, reported in*² a case which directly dealt with Articles 29(2) and 46 of the Constitution, set out the position thus :

"Indeed the learned Advocate-General of Madras even contends that the provisions of Article 46 override the provisions of Article 29(2). We reject the above noted contentions completely. The directive principles of the State Policy which, by Article 37, are expressly made unenforceable by a Court, cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate Writs, Orders or directions under Article 32. The Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate Articles in Part III. The directive principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Parts III and IV have to be understood."

That was a case in which an order of the Madras Government providing for distribution of seats in educational institutions on the basis of communities was attacked as unconstitutional which attack was upheld by both the High Court of Madras and the Supreme Court of India. In doing

so, both the Courts relied upon the fact that Article 15 as it then stood, did not contain any provision corresponding to clause (4) of Article 16 enabling the State to make any provision for reservation of appointments for posts in favor of any Backward Classes of citizens which, in the opinion of the State, are not adequately represented in the services.

33. The decision of the Supreme Court was pronounced on the 9th of April 1951. The Constitution First Amendment Act of 1951 was passed and came into force on the 18th of June 1951. By Section 2 of the said Act, a clause was added as the fourth clause to Article 15 reading :

² AIR 1951 SC 226

"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 Scheduled Tribes."

It will be noticed that the Fundamental Rights guaranteed by Articles 15 and 29 were not sought to be completely taken away but only permitted to be abridged to the extent and for the purpose indicated in the new 4th clause added to Article 15. The significance of this will be better appreciated if it is noted that the same Amendment Act introduced a new Article 31-A with retrospective effect stating that no law providing for the acquisition of any estate or any rights there under or for the extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III. Although this Article was subsequently substituted by another slightly differently worded Article by the subsequent Fourth Amendment Act of 1955 in which protection to the laws mentioned therein was granted only against inconsistency with or taking away or abridging any of the rights conferred by Articles 14, 19 or 31, it is perfectly clear that the Parliament was deliberately providing for complete extinguishment of a fundamental right by legislation of a particular description while at the same time providing for mere abridgment of a fundamental right to a specified extent by legislation of another description. Even on the topic of backwardness of certain classes of citizens, Particular features of it, viz., untouchability and non-access to all public resorts, etc., are expressly dealt with in the Fundamental Rights Part under Articles 15(2) and 17, while other features of backwardness resulting from social or economic injustice are dealt with in Part IV under the heading "Directive Principles of State Policy". When the Constitution First Amendment Act was passed, the Parliament did not think it fit to transfer Article 46 to Part III as a Fundamental Right but merely engrafted one idea from it as an exception to Articles 15 and 29(2) by adding clause (4) to Article 15.

34. It is, therefore, abundantly clear that a special provision for the educational advancement of any backward class of citizens though comprised within the directive principles of the State Policy, can be made only by way of a permissible abridgment of the Fundamental Rights under Articles 15 and 29(2). Not only these but also several other Fundamental Rights are subject to exceptions or abridgment expressly provided in the Constitution in respect of each of them. The 4th clause of Article 15 comprises two ideas - one of classifying citizens as socially and educationally backward and the other making a special provision for their advancement. The former has relevance to the ideas of equality and non-discrimination and the latter to the ambit of the restraint which could lawfully be placed upon the Fundamental Right. It is well established

that a classification, not inconsistent with the idea of equality and not involving discrimination, should be one which fulfils two conditions, viz., that it must be founded on intelligible differentia which distinguish persons or things that have been grouped together from those left out of the group, and that the differentia must have a rational relationship to the object sought to be achieved. It is equally well established that a restraint can be said to be reasonable only when it is necessary to achieve a particular purpose and should not exceed what is necessary for achievement of that purpose.

35. It is in the light of these principles that we have to examine the Mysore Backward Classes Committee's Interim Report.

36. Though the Committee was appointed to suggest criteria to be adopted in determining socially and educationally backward classes of citizens, both for the purpose of admissions into educational institutions as well as for the purpose of preference in respect of appointments, the Interim Report was intended to meet the second purpose. Nevertheless, according to the arguments of the learned Advocate-General, the result of their study of the problem is of help for the first named Purpose also and certainly not entirely irrelevant thereto. After referring to Articles 15(4) and 16(4), the Committee observes that the backward classes of citizens referred to in Article 16(4) are evidently those socially and educationally backward classes of citizens referred to in Article 15(4). This view of the Committee has been criticized by the learned counsel for the petitioners before us. This criticism, in our opinion, is not fully justified. Even otherwise, as pointed out by the learned Advocate-General, this view of the Committee actually leads to the inference that though they were immediately concerned with Article 16(4), what they have actually done is to determine or suggest criteria in determining socially and educationally backward classes of citizens within the meaning of Article 15(4).

37. After rejecting as either impracticable or difficult of precise application certain criteria suggested to them for determining backwardness on the basis of what are called the four Varnas of Hindu Society, traditional occupations and income, the Committee decided that "backward Classes should be listed only on the basis of their castes or community and their backwardness judged on the basis of the percentage of literacy in the community and their representation in Government service".

38. The first test for determining the constitutionality of the classification based on this Criterion is to consider whether it is an intelligible differentiation and whether it is reasonably related to the object of advancement of these classes.

39. The first attack on this suggestion is that it is admittedly based on caste or community which is the very thing that Articles 15 and 29(2) deprecate. The matter so far as this Court is concerned is covered by authority. In Ramakrishna Singh's case, 38 Mys LJ 652 : AIR 1960 Mysore 338, already referred to, this Court in clear terms rejected the argument that caste could never be the basis for determining backward classes. Apart from authority, what the Constitution really prohibits is a discrimination based on grounds only of caste. If however, a group of persons clearly identifiable by their caste is really backward socially and educationally, and is on that basis given the benefit of certain reservations, the indigibility of a person belonging to another caste to secure those reservations is clearly not based on the ground of caste but is a consequence of the reservation properly made in favor of a backward class. Such a classification will be open to challenge only if it can be shown that the criterion adopted for determining their backwardness

is useless as a test of backwardness, so that the preference given to them will virtually amount to a preference on the ground of caste alone, the description as backward being illusory or fictitious. 40. This leads to the question whether the test of literacy is or can be an effective test for determining educationally backward classes. Here again, the learned Advocate-General contends that the matter is covered by authority. The learned Chief Justice in Ramakrishna Singh's case 33 Mys LJ 652 : AIR 1960 Mysore 338 was of the opinion that the only possible test for determining educational backwardness was literacy. The learned counsel for the petitioners state that this was only an observation in the nature of an obiter dictum, because it was sufficient for the purpose of that case to state that the classification made by the order impugned therein did not proceed on any intelligible principle and it was unnecessary to go further and indicate that literacy was the proper test or that it was the only possible test. Upon authority, therefore, it cannot be said either that literacy can never be a test of educational backwardness or that it is the only test of it. The substantial question to be determined is whether as a criterion it is reasonably related to the object of the advancement of backward classes.

41. Now, backwardness may have several features and several contributory causes.

Some of them are dealt with in Part IV of the Constitution, particularly in Articles 39, 41, 43, 46 and 47 dealing with economic inequalities, unemployment and the lack of education, living wage, decent standard of living, leisure and of social or cultural opportunities. Although all or any of these may lie either causes or features of backwardness, it is evident that the provision for advancement in each case consisting of measures to remove the particular deficiency must vary with the nature of the deficiency. We are tiers concerned particularly with educational backwardness.

Education, it is strongly argued, is much wider than mere literacy. When the determination of backwardness is taken up for the purpose of making a special provision only by way of reservation of seats in Professional and Technical Colleges, the argument continues, the particular deficiency that is sought to be remedied is the lack of professional and technical education and the test to be selected should therefore be one to determine backwardness in respect of that type of education.

A man may be literate but still backward from the point of view of professional or technical education in the Universities. For these and similar reasons the learned counsel for the petitioners urge that literacy as a test is not one which can be said to have a reasonable relationship with the immediate object to be gained.

42. Although this argument is not entirely without force, there are, in our opinion, weighty reasons why full effect cannot be given to it. It cannot be doubted that the growth of literacy among People indicates a clear tendency towards progress; the lack of it therefore indicates backwardness and absence of progress. Education may be and is a much higher idea than mere literacy. Although in an ideal sense even an illiterate person may be highly educated, as was the case with ancient oral tradition at a time when script was unknown or was in a rudimentary stage, it can hardly be suggested in the present state of society that education can exist or progress without literacy.

It can rightly be described as the first step in education. Though, therefore, it may be said to be not intimately related to the object of determining backwardness from the point of view of higher education, it can never be said to be wholly unrelated to the object or entirely useless as a criterion. Another reason why it cannot be discarded altogether is that whereas there are for its

application some reliable data (the exact extent and reliability of which we shall consider at a later stage), the data necessary for applying the test of lack of higher education are completely non-existent and may take a long time to collect. When a person, though literate, may yet be backward from the point of view of higher education, there can be no doubt whatever that an illiterate person is wholly backward. Therefore, the test of literacy is, if anything, a more rigorous test than one consisting of lack of higher education alone.

43. Having regard to all these aspects of the matter, we are of the opinion that literacy as a test of educational backwardness adopted by the Backward Classes Committee, is both an intelligible one and in existing circumstances, reasonably related to the object to be gained and that therefore, a classification of citizens as educationally backward or otherwise on the basis of the extent of their literacy is a reasonable classification, not inconsistent with the Principles of equality and not involving discrimination of the type prohibited by the Constitution.

44. The next attack against the Interim Report is that it has proceeded on inadequate data supplemented by irrational assumptions. It is an admitted fact, and the Committee itself states it, that it could not get either very correct or up-to-date information to assess the percentage of literacy among the various communities of the State. In the Census figures of 1941 relating to the old Mysore State, there is complete information on the percentage of literacy of the various Communities of that State. In 1951, however, the Central Government reversed the policy of collecting information on the basis of caste at the time of taking the general Census. Hence, from the Census Report of 1951, only the State percentage of literacy can be ascertained and not the percentage of literacy of various communities. The State Percentage increased from 12 per cent in 1941 to 20.6 per cent in 1951. For the purpose of calculation, therefore, the Committee proceeded on the basis that literacy must have advanced in respect of each community in the ratio of increase in the overall State percentage of literacy. It is contended that this was a wholly untenable assumption to make. It is argued that the growth of literacy can never be uniform, placing great reliance on the observations contained, in one of the earlier Census Reports that except in the case of Brahmins who have a traditional love of learning, the other communities did not take so enthusiastically to learning or even to elementary or primary education. It appears to us that this argument also involves a presumption or an assumption of a certain tendency. In view of the proved fact that the State average of literacy has actually advanced from 12 to 20, and if regard is to be had to the observed desire of the entire Country to improve and the attempts made by the State towards the spread of literacy, the assumption on which, the Backward Classes Committee has proceeded, appears to us to be more rational, and the assumption underlying the argument against it not wholly reasonable.

45. After thus determining the percentage of literacy of the various communities and dividing them into two classes, one consisting of those whose percentage of literacy is higher than the State average of literacy and the other of those whose percentage of literacy is below the State average, the Committee applied another check to their conclusions. They ascertained from the Education Department the strength of the students community wise in Secondary Schools in the State during the year 1959-60.

Though the figures were not complete, it was ascertained that the total number of students in the Secondary Schools worked out to 0.76 Per cent of the total population. The Committee states that they have satisfied themselves that the percentage of children of the communities listed by them as backward communities attending Secondary Schools, was less than 0.76 per cent.

46. The Committee next proceeded to make a list of Communities who are inadequately represented in the Government services. They considered the adequacy of representation to be one in the ratio of the population of the community to the total population of the State. From the list of communities inadequately represented in Government service they excluded the communities who have a percentage of literacy above the State Percentage of 1951. The ultimate result is that the communities listed by them as Backward Classes are those who are inadequately represented in Government service and who have a percentage of literacy below the State average of 1951. We are not directly concerned with the question of adequacy or inadequacy of representation of communities in Government service, but the point to note is that the test on the strength of which the final list of Backward Classes was prepared by the Committee is one of literacy.

47. Another attack, very seriously Pressed against the conclusions of the Backward Classes Committee, is that the estimated figures for population of the various estates for the year 1951 on the basis of which they have proceeded to make their recommendations, are or should be held to be utterly unreliable being based on what is described as mere imagination or speculation. In the Appendix attached to the Report, the Committee has set out the manner in which the figures have been calculated and arrived at. What is stated in the Appendix is obviously a paraphrase or a re-statement of what has been stated in the introductory note attached to a Publication issued by the Census Department of the State entitled "Estimated population of Castes in Mysore State". That introductory note after indicating that till 1941 Census Publications had been exhibiting caste-wise data in respect of certain selected castes where their population was not less than one per cent of the total population of a District, states that in 1941, owing to exigencies of war, full and complete tabulation was not possible in several States and Provinces and that in 1951 the Government of India abolished caste-wise tabulation altogether. Having stated that, they proceed to explain how they have arrived at the various figures. They have applied certain observed Population trends to the actual figures. It is found that such actuals were of the year 1941 in the case of old Mysore, 1931 in the case of Hyderabad Karnataka areas and of 1911 in the case of Coorg and Madras Karnataka areas. In respect of certain castes of Hyderabad Karnataka areas, they had to go as far back as 1901. They have made two basic assumptions. One is that a given caste bears the same proportion to the total population of a District in 1951 as it did at the Census for which actual caste figures are available. Secondly, they have assumed where figures were not available at all, that the percentage which the population of the caste bears to the total Population of the District would be 0.9 per cent. Finally, it is stated that the list of castes given by them cannot be said to be exhaustive of all the castes found in the State.

48. The question is whether these two basic assumptions can be said to be so completely speculative as to be utterly unrealizable. It is not suggested that the actual figures from which the Census Department started making calculations are either imaginative or completely wrong. While criticising the assumptions made in respect of the growth of literacy, the argument was that though the growth of population is governed by certain observed trends, no such assumption is Possible in the case of growth of literacy. If so, it can hardly be suggested that the Census Department committed any grievous error when they proceeded on the basis of such observed trends for offering their estimated figures for the year 1951 starting from actual figures wherever available. If it is true, - and it is not disputed it is so, - that the figures in respect of the castes were not stated in the earlier Census Reports where the Population of that caste was less than one per

cent of the population of a District, there could be no valid objection to the Census Department proceeding on the basis that the population of that caste must be at the highest 0.9 per cent of the population of the District. Thus although one cannot say that the estimated figures are absolutely accurate, it is not right in our opinion to condemn those figures as utterly unreliable. The fact that they are not exhaustive of all castes in the State does not and cannot be the basis for a suggestion that the figures actually stated should be totally discarded.

49. On the whole, therefore, it appears to us that the several criticisms made against the Report of the Backward Classes Committee taken at their highest, do not justify the conclusion that their determination or classification of certain communities as Backward Classes proceeds on such irrational basis so completely unrelated to the object of making a special provision for the advancement of Backward Classes in the State that the State's action on its basis constitutes an infringement of any of the Fundamental Rights of the petitioner.

50. This opinion of ours receives further support from the very nature of the arguments addressed before us. In the course of the elaborate arguments by the several counsel before us, no one has suggested or made any attempt to make out that the list of Backward Classes prepared by the Committee contains any community which is not really backward educationally and socially. No doubt, some of the affidavits do make such a suggestion, but it has remained as a mere suggestion, not supported by any material nor pressed before us actually in the course of arguments. All the arguments have been directed towards trying to establish that certain of the communities now excluded from the list of Backward Classes should have been included therein.

51. On behalf of the petitioners belonging to the Lingayat Community, the argument has been that they have been wrongly excluded from the list. It has been argued that although the average literacy among them may be said to be above State average, that percentage itself being just about 30 the remaining 70 per cent of the population of the Community is undoubtedly backward. It is further argued that although certain Sections of that community may be considered to have progressed both socially and educationally, vast majority of them, particularly those residing in Hyderabad Karnataka area of the State, are still in an extremely backward condition.

52. Likewise, on behalf of the petitioners belonging to the Bunt Community of South Kanara, the contention has been that they should have been classed along with Vokkaligas as a backward class. Their counsel has strongly criticized the observations in para 10 of the Committee's report wherein after stating they are not adequately represented in Government service and their literacy figures in 1940-41 were not known, the Committee has accepted that according to the 1931 Census of the Madras State, they had literacy percentage of 15.99 as against the State percentage of 9.3.

53. One of the petitioners belonging to the Balija Community or Caste has actually prayed in his petition that his application should have been considered on the same footing as one by a person belonging to backward classes.

54. Another petitioner belonging to the Sourashtra Community contends that his Community should have been classed as backward for the reason that it was so treated in the Madras State.

55. One petitioner belonging to the Ammakadaga Community and another petitioner belonging to the Gudigara Community have also claimed that they should have been classed as backward. In the case of these communities, the Secretary of the Backward Classes Committee has filed affidavits referring to representations made by organisations of those communities, and has given reasons why effect could not be given to those representations. He has also stated that further investigations are being conducted to ascertain the exact state of literacy prevalent in those communities with a view to examine the justice of their claim.

56. We are clearly of the opinion that these arguments could have no bearing on the principal question with which we are concerned, viz., whether the impugned orders are in any respect opposed to any of the provisions of the Constitution. So long as the list of Backward Classes does not contain any group or community which is really not backward and so long as that classification has been made on the basis of intelligible criteria reasonably related to the object of making provision for the advancement of socially and educationally backward classes, the fact that that list may not be exhaustive of all the backward classes in the State is not, in our opinion, such an infirmity as to require striking down the list now made. It should be remembered that we are concerned only with the constitutionality of the impugned orders in so far as they purport to abridge Fundamental Rights and that any claim by any group or community that it should have been included in the said list is a matter falling under Part IV of the Constitution dealing with directive principles of State Policy which, in view of the express terms of Article 37, is not enforceable by any Court.

57. It has been suggested that the classification could have been made on other reasonable bases as, for example, occupation, territorial distribution, etc. But, this is not saying that the basis or the criterion actually adopted is unreasonable. The fact that the classification can be made on other bases or other Criteria is no ground for striking down one made on the basis or a criterion not shown to be unreasonable. Moreover, the suggestions before they can be given effect to require further investigation and collection of data not immediately available, whereas the tests now selected are capable of immediate application on the basis of available data. The directive principles of State Policy though not enforceable in a Court of law, are nevertheless fundamental in the governance of the Country and the Constitution declares that it shall be the duty of the State to give effect to them. In the light of such duty undoubtedly resting on the State, its action in selecting a criterion which enables it to perform its duty in preference, to others which would delay such performance, cannot be attacked either as opposed to the Constitution or inspired by mala fides.

The impugned Orders themselves indicate that the Government have accepted the conclusions of the Interim Report only pending receipt of the final Report of the Committee. Further, in the affidavits filed in these cases, the Government have expressly stated that when the final report is received, they will take steps to effect such modifications in the list as may be necessary in the light of the final Report.

58. On a consideration of all aspects of the matter, we hold that the enumeration of certain communities as socially and educationally backward classes of citizens in the State contained in the Annexure to the impugned orders is not unconstitutional.

59. The next question for consideration whether the manner in which selections have made is open to attack either on the ground of un-constitutionality or on other grounds such as arbitrariness, mala fides, etc. This question has two aspects (1) the propriety of the direction

contained in the impugned orders to the effect that if any seat or seats reserved to the Scheduled Castes or Scheduled Tribes remain unfilled, the same shall be filled by other Backward Classes and (2) the propriety of assessing the merit of the several candidates for admission on the basis of marks awarded at an interview or other tests applied by the several Selection Committees.

60. We shall take up the second aspect for consideration first.

61. We have already briefly described the method followed by the Selection Committees. The procedure of holding interviews was one prescribed by the Government itself. The maximum number of marks for interview was also indicated by the Government. So far as the allocation of marks at interview is concerned, the principal attack has been that it has invested the Committees with enormous power unguided by any stated principles or rules and that this circumstance itself necessarily imports inequality consequent upon possible capricious exercise of the power. It is stated that this power could be easily exercised to reduce the rank of a candidate either because the Members of the Selection Committee did not like him or because he belongs to a particular community, or to put up the rank of another candidate whom the Members of the Committee may like, or because he belongs to a particular community. Another attack which was confined to the selection of candidates made to the Medical Colleges is that the Committee acted arbitrarily in deciding that particular combinations of subjects are better suited than others for medical studies and in making a distribution of available seats between the students who had passed the Pre-University Examination with different combinations of Optional Subjects.

62. In dealing with these arguments, the first and primary factor to be borne in mind is that when the number of seats available is much smaller than the number of applicants, selection becomes inevitable. The argument that the marks obtained by the several candidates at the qualifying examinations should alone be the guiding factor does not exclude the idea of selection. Hence, it follows that the mere Passing of a qualifying examination by securing the minimum number of marks required for a pass does not by itself entitle a particular person to secure admission. A further test for selection should, therefore, be applied.

It cannot be doubted nor is it disputed that a written examination does not and cannot constitute a test of all the qualities necessary for taking up a professional course. Thus, if a selection is inevitable and further test in addition to a mere written examination cannot be totally excluded, we fail to understand how the test by interview is or can be described as totally objectionable. The Members of the Selection Committee are academicians intimately connected with higher education in professional and technical courses and occupy responsible positions in academic circles. Their opinion that certain combinations of subjects are better suited for further studies in medicine cannot be lightly disregarded. It may be remembered that whereas the eligibility rules of the Mysore University permit a student who has passed the Pre-University Examination with any two out of a specified number of subjects as his Optional Subjects, those of the Karnatak University specify Physics, Chemistry and Biology as the only eligibility group of subjects for admission into the Medical Course. It has not been suggested that there is anything improper or unreasonable in this rule of the Karnatak University. When, therefore, a University has properly taken a particular view, a similar view taken by the Selection Committee cannot rightly be described as improper.

63. Although suggestions have been made in certain of the affidavits that the allocation of marks at the interview has been so manipulated as to favor certain, candidates or candidates belonging

to certain communities and to discriminate against other candidates or candidates belonging to other communities, none of the learned counsel in the course of his arguments actually suggested any mala fides or bad faith on the part of any of the Members of the Selection Committees. All that the arguments really amounted to was that there is in the practice or procedure of awarding marks at an interview a clear possibility of abuse. It is enough to observe that men in high and responsible Positions are expected to perform their duties and exercise their powers with honesty and a sense of responsibility and that, if a man is really dishonest, the best and the most perfect set of rules may in conceivable situations fail to prevent dishonesty. It is, therefore, only proper that we should proceed on the basis that the Members of the Selection Committees may be taken to have acted honestly and under a sense of responsibility. If, however, they have in any particular case acted either in bad faith or arbitrarily or capriciously, it is for the Person alleging such bad faith, arbitrariness or capriciousness to prove the same as a fact. No such attempt has been made in any the cases before us, except one which will be examined at a later stage.

64. Now, coming to the question of the property of transferring the unfilled seats out of the reservation made for Scheduled Castes and Scheduled Tribes to the benefit of the other Backward Classes, this question also has to be examined from the Point of view of whether or not it infringes the Fundamental Rights under Articles 15 and 29(2) of the Constitution. We have already stated that a special provision for the advancement of Backward Classes within the meaning of Clause (4) of Article 15 is in the nature of a restraint on the Fundamental Rights and that the reasonableness of the restraint has to be tested by asking the question whether the ambit of it is wider than required by the actual necessity of imposing that restraint to achieve the object of securing advancement of Backward Classes.

65. The first and the most important idea which should not be lost sight of, is that although the Scheduled Tribes, Scheduled Castes and other Backward Classes are by reason of their backwardness treated as deserving of encouragement intended to improve their conditions, they are nevertheless citizens of India in the same way as members of all other castes are citizens of India and as such citizens, they are equally entitled to the constitutional guarantee of Fundamental Rights. They are entitled therefore to the same equality of status and opportunity as the rest of the citizens are.

Therefore, any special provision by way of reservation of seats or otherwise made in their favor cannot be worked in such a way as to prevent them from exercising their Fundamental Rights. Such will be the position if the Scheduled Castes and Scheduled Tribes and the other Backward Classes are put in separate compartments and the rest of the citizen put in another compartment and each confined to its own respective compartment. At the same time, if these Scheduled Castes, Scheduled Tribes and other Backward Classes are thus entitled to their Fundamental Rights, other citizens are equally entitled to say that the same Fundamental Right of theirs shall not be abridged beyond the limits constitutionally permissible for the protection and encouragement of Scheduled Castes, Scheduled Tribes and other Backward Classes.

When therefore a reservation of a certain percentage of seats is made in favor of Scheduled Tribes or Scheduled Castes or other Backward Classes, they cannot on the basis of their backwardness ask for more seats than are included in the reserved percentage. Therefore, compartmentalization is open to objection from the point of view of the Fundamental Rights of both categories of citizens. To prevent a member of the category entitled to reservation from competing in the other or general category abridges his fundamental right. To permit him to compete separately both in the reserved category as well as in the general category abridges the fundamental right of a member of the general category beyond the limits constitutionally

permissible for the protection of the reserved category. Hence, for a reservation of a certain number of percentage of seats to be constitutionally correct or appropriate, it should not be in the nature of compartmentalization but in the nature of a guaranteed minimum in the course of a general competition among all categories of citizens.

66. It has been argued by the learned Advocate General that the very content of the reservation in favor of the other Backward Classes in the present case is 22 per cent of the total seats his such number of seats allotted to the Scheduled Castes, and Scheduled Tribes as may remain unfilled. This argument proceeds upon the basis that the Scheduled Castes, Scheduled Tribes and other Backward Classes together constitute a single category. This assumption, in our opinion, is opposed to the clear indications found in the Constitution itself. The differentia for the classification of these three classes are different and clearly distinguishable. The Scheduled Castes and Scheduled Tribes are those specified by the President in the notification Published under the provisions of Article 341 of the Constitution, such notification itself amounting to their definition as Scheduled Castes and Scheduled Tribes for the purposes, of the Constitution, and except to the extent to which the Parliament may by law made pursuant to Clause (2) of that Article include in or exclude from the list specified in such a notification any caste, race or tribe, that notification is not to be varied by any subsequent notification. It is thus clear that the Scheduled Tribes and Scheduled Castes are constitutionally denned categories of citizens.

With respect to other Backward Classes, the special provision for the advancement of which classes is in the nature of restraint or abridgment of one or the other Fundamental Rights of citizens guaranteed by the Constitution, their classification as well as the nature of the special provision are controlled by considerations already discussed above. It follows therefore that the Scheduled Castes, Scheduled Tribes and other Backward Classes are three different categories whose classification is based on different indicia and the classification of the third named among them may vary from time to time and with reference to the nature of their backwardness which is sought to be remedied by special provisions made in respect of it.

67. Hence, in our opinion, the allotment of seats under the provisions of the impugned orders in favor of the other backward classes in excess of the 22 per cent reserved for them in a manner otherwise than by open competition is an unreasonable restraint on the Fundamental Right of other citizens and therefore opposed to the Constitution.

68. The learned Advocate-General has further tried to support this additional allocation by relying upon the decision reported in *V.V Giri v. D. Suri Dora*³, That decision proceeded on the basis of the provisions of the Constitution and of the Representation of the People Act in relation to elections in respect of the multi-member constituencies where certain seats are reserved for Scheduled Castes and Scheduled Tribes. Having regard to the constitutional Principle that the election is one and entire, not based on separate electorates and to the express provisions of Sections 54 (4) and 55 of the Representation of the People Act, their Lordships held that a member of the Scheduled Caste is not prevented by the declaration made by him for the purpose of competing for a reserved seat from getting elected to the general or unreserved seat as well, in respect of both of which votes are cast by the entire electorate as two joint electorate and not as two separate electorates. Indeed, it is this very principle which underlies our conclusion according to which the Backward Classes should compete on merit in open and general competition with all, and still have a certain number or percentage of seats as a guaranteed minimum reserved for them. Their Lordships had no occasion in the case cited to deal with a

problem of the type we are now examining in which a reserved seat remains unfilled for lack of a person for whose benefit the same had been reserved.

69. In view of the principles discussed above, the only manner in which the reservations in favor of Scheduled Castes and Scheduled Tribes and other Backward Classes can be worked out without being attacked as unconstitutional is to treat the reservation made in respect of each one of those classes as one in the nature of a guaranteed minimum of seats in open competition. For this purpose, it is necessary to prepare one consolidated list arranging all the applicants irrespective of castes or categories in the order of merit. If within the limit of the number of persons to be selected in the said list in the order of merit, each one of the three categories of Scheduled Castes, Scheduled Tribes and other Backward Classes secures the number of seats reserved for each one of them or a larger number, then nothing more need be done. If, however, any one of those categories secures less number of seats than the minimum guaranteed to it within the said limit, then the deficiency must be made up by selecting in the order of merit from among the members of that category lower

³ AIR 1959 SC 1318

down in the list such number to the extent available as is necessary to make up the deficiency and at the same time, deleting an equal number of persons belonging to the unreserved category counting from the bottom of that part of the list falling within the limit of the number to be selected.

70. The above method can easily be given effect to in the case of the list prepared in respect of the Engineering Colleges and Institutions. In the case of the lists relating to Medical Colleges, there is one complication, viz., that while assessing merit the Selection Committee has taken into account not merely the aggregate of marks obtained at the qualifying examinations and at the interview, but also the particular combination of subjects offered by the candidates of the qualifying examinations. As we have already held that the combination of subjects is a relevant consideration in assessing merit for the Purpose of taking the Degree Course in Medicine. We do not think it necessary to direct that the Selection Committee should altogether omit this consideration while assessing merit. While preparing, therefore, a consolidated list on the basis of merit, the Selection Committee will, we have no doubt, apply such principle as may be just in the circumstances of the case while giving effect to the combination of subjects as one of the considerations in assessing merit.

71. Having thus expressed our views on the general questions, argued before us, we shall now proceed to consider certain cases in which special considerations peculiar to those cases, have been pressed before us.

72. The petitioner in W. P. 1041/60 complains that great injustice has been done to him by rejecting his application because the qualifying examination passed by him, viz., the Pre-Professional Examination of the Osmania University since recognised as sufficient for eligibility by the Karnatak University entitles him only to take the Degree Course in Medicine at the Hubli Medical College. We do not think, however, that this entitles the petitioner to any special consideration not available to other applicants. The substance of the matter is both he and the rest of the applicants who have passed other qualifying examinations are eligible for taking up the Degree Course in Medicine.

73. The particular grievance of the petitioner in W. P. 870 of 1960 is that he was not called for interview for selection into the Medical College at Hubli on the mistaken impression that the qualifying examination passed by him, viz., the Pre-University Examination of the Mysore University with Physics, Chemistry and Biology as his Optional Subjects had not been recognised by the Karnatak University. That the said impression was wrong is clear from a communication received by him from the Karnatak University in No. X. 108 Aca. dated 7th July, 1960 produced along with his petition. In this the Registrar of the University has clearly stated that, according to the decision recently taken by the University, he has been held to be eligible for admission into the Pre-Professional Course in Medicine of the Karnatak University.

The Petitioner had applied for admission into one of the Colleges within the jurisdiction of the Mysore University as well by a separate application and had been interviewed for the purpose of admission into one of those Colleges. The Selection Committee, as we have already stated, was the same for the Medical Colleges in the jurisdiction of the Mysore University and the one College in the jurisdiction of the Karnatak University. Now that the Karnatak University also states that he is eligible for admission into the Medical Course of that University, there should be no difficulty in considering his application for admission into any one of those three Colleges and any possible injustice to him may therefore be easily avoided.

74. The grievance of the Petitioner in W. P. No. 788 of 1980 is of a more serious nature. He appears to have had to his credit a fairly good performance throughout his school and College career. He had applied for admission into any one of the Medical Colleges coming under the jurisdiction of both the Universities. He was interviewed first at Hubli for considering his application for admission into the Hubli College. When he later appeared for another interview for the purpose of considering his application into the Mysore Colleges, the only question asked of him was whether he had not already appeared for the interview at Hubli. In the counter-affidavit filed by the Chairman of the Selection Committee, it is stated that the only ground on which the petitioner was not selected for admission was that he was disqualified on medical grounds. The Selection Committee, according to the affidavit, took the view that the petitioner suffered from bilateral paresis of the ocular and oral muscles with inability to close the eyes completely and to appose the lips completely and that the latter defect rendered him unable to phonate properly certain sounds. The affidavit further states the definite opinion that it is difficult for any person to follow the speech of the petitioner or to understand him and that his articulation and speech are both, very defective. In the affidavit in support of the petition, the petitioner's brother has stated that only four questions were put to the Petitioner at the interview held at Hubli and he has given the text of those questions and answers. This fact has not been denied in the counter-affidavit filed by the Chairman of the Selection Committee. The reason now stated in the counter-affidavit for rejecting the petitioner's application was not disclosed to him because information sought by him regarding the result of the interview was considered confidential. After receipt of the counter-affidavit filed in this case, the petitioner's brother has filed a reply affidavit in which it has been definitely stated that the petitioner was not examined medically by any one of the Members of the Committee nor was he asked if he was suffering from any defects nor to close his eyes or to pronounce any particular word. He has further denied that there are any such serious defects in his speech or articulation and added that he had actually taken part in school debates and dramatic performances. Along with his application for admission he had submitted as required in the form a medical certificate of fitness issued by the Doctor in charge of the Civil Hospital at Bijapur after conducting necessary examination. The form of certificate of physical fitness to be issued by a Medical Officer contains a note that any defect, deformities

or any other disabilities when present should be noted in detail. The affidavit filed by the Chairman of the Selection Committee in this case does not disclose whether any such defects were noted in the certificate. In the reply affidavit the petitioner's brother states that he got the petitioner medically tested by one Doctor C.G. Jog, the Chief Medical Officer of the Sait Sakaram Nemchand Hospital at Sholapur and has produced his Certificate along with the reply affidavit. The Doctor has certified that he examined the petitioner on the 1st September 1960 and found him fit to undergo medical studies and that although the petitioner had some difficulty in pronouncing a few syllables, his speech was fluent and understandable.

No further affidavit has been filed by either the chairman or any other Member of the Selection Committee denying the specific allegations made in the reply affidavit, nor is there any material to disbelieve the specific statement made on behalf of the petitioner that he was not subjected to any medical examination by any of the Members of the Committee. In these circumstances, there is no alternative but to hold that the rejection of the petitioner's application on what are described as 'medical grounds' was arbitrary and whimsical in the sense that it is unaccountable on the material placed before us.

75. Next and the last Case which raises a special point is W. P. No. 910 of 1960. The petitioner therein having passed in the Second Class the Pre-University examination of the Karnatak University, applied for admission into the Engineering College at Bangalore and also for admission into the Bhooma Reddy College of Engineering, Hubli. The former is in the jurisdiction of the Mysore University and the latter in the jurisdiction of the Karnatak University, and the Government had appointed two Selection Committees, one to deal with the applications for admission into the Colleges of the Mysore University and the other to deal with the applications for admission into the Colleges under the jurisdiction of the Karnatak University. The Committee dealing with the former set of Colleges, i.e., Colleges in the jurisdiction of the Mysore University called the petitioner for an interview. Although the petitioner without stating specifically whether he did or did not attend that interview complains that he has been defied a seat on account of the hostile discrimination owing to what he describes as the communal order of the Government, it is clear from one of the annexures to the consolidated affidavit filed by the Deputy Director of Technical Education and the Secretary of the Admissions Committee for Engineering Colleges, that the petitioner was absent at the interview. The petitioner was not called for interview for the purpose of considering his application for admission into the Bhooma Reddy College of Engineering and his application was rejected on the ground that he had not completed the age of 16 years as required by one of the Circulars issued by the Karnataka University bearing No. K-108/Acg. dated 31st of May 1960. Thereafter, the petitioner addressed a letter to Vice-Chancellor of the Karnatak University on the 20th of June 1960 requesting that the age restriction imposed by the above Circular may kindly be relaxed in his favor, especially because one of the donors of the College had recommended him for admission into the College. The University did relax the condition and wrote to the petitioner on the 11th of July 1960 that the age restriction for admission to Engineering Course has been removed for the current year only, i.e., 1960-61. By that time, the Selection Committee in respect of the Bhooma Reddy College at Hubli had met and completed its work. The petitioner's application could not therefore be considered. No complaint has been made specifically against the Principal of the College who has been impleaded as the 4th Respondent in this Writ Petition, nor could any be made, because in rejecting the petitioner's application he did no more than obey one of the rules of the University which, at the time he rejected the application, was undoubtedly binding upon him. The argument on behalf of the Petitioner is that the University having admitted him into the Pre-

University Course at a time when there was no rule fixing any age restrictions for admission into the Integrated Five Years' Course of Engineering, it was precluded on the principles of equitable estoppel from imposing any such age restrictions to the detriment of the petitioner. Apart from the general question whether it is permissible to invoke any such Principle of equitable estoppel, there could be no scope for doing so unless it can be shown that the Pre-University Course and the Five Years' Integrated Course of Engineering together constituted a single Course of Study in which case alone the petitioner could have complained that he having entered the course at a time when there were no age restrictions, it would be unjust to prevent him from continuing the Course by imposing fresh restrictions at the end of one year. It is obvious that the Pre-University Course and the Five Years' Integrated Course of Engineering are two different Courses. If it were the same Course, there would be no question of there being anything like an admission into the Engineering Course because on the basis that both are one Course the petitioner must be held to have been admitted into the Course at the very time when he entered upon the Pre-University Course. Such is not his case or contention. Upon the material placed before us, it is perfectly clear that what he describes as the communal order of the Pre-University Course is a preliminary qualifying Course by taking which the students acquire the eligibility for admission into one of the Degree Courses, such as B. Sc., B. E., B. A., M. B. B. S., etc. The argument of estoppel raised on behalf of the petitioner is therefore without any basis of foundation. The petitioner having deprived himself of the opportunity of getting selected for admission into the Engineering College at Bangalore by refraining from attending the interview held for that purpose and lost the opportunity of getting admitted into the Bhooma Reddy College by virtue of circumstances for which none of the respondents can be held responsible, it is not possible for us to grant any relief to the petitioner in this case.

76. Before stating our final conclusions, it is necessary to examine the case of the National Institute of Engineering, Mysore. As already stated, this Institute stood out of the Scheme of selection by a common Selection Committee appointed by the Government. In two Writ Petitions Nos. 910 and 951 of 1960, the name of this Institute is mentioned as one of the Institutions for which selections were made by the common Selection Committee. This is an obvious mistake and therefore the name of the Institute must be deleted from the cause title in those cases. However, in sixteen other cases, the Institute has been impleaded as an independent respondent. In one of them, viz., W. P. No. 1010 of 1960, the Institute states that the petitioner therein had not even applied for admission into that Institute. This petition, therefore, should stand dismissed as against the National Institute of Engineering, Mysore. As to the rest, the contention of the Institute in the counter-affidavit filed in W. P. 820 of 1960 is that the impugned Government Orders are valid, that the Institute had applied them in respect of 96 seats excluding those at the discretion of the Institute and that both in the case of applications falling within the general Merit Pool and in the case of applications falling within the reserved Pool they have strictly adhered to the marks obtained by the candidates in the qualifying examinations for assessing their merit. In accordance with the Government Order, they have transferred unfilled seats reserved for Scheduled Castes and Scheduled Tribes to the Backward Classes Pool. Hence, so far as this aspect of the matter is concerned, the manner of selection made by the Institute would be unconstitutional for the reason already stated.

77. The result of the several petitions, therefore, is as follows :-

W. P. No. 910 of 1960 is dismissed against all the respondents.

W. Ps. 951 and 1010 of 1960 are dismissed as against the National Institute of Engineering, Mysore, only. Subject to what is stated in the last preceding paragraph, in each of the 49 Writ Petitions (i.e., all excluding only W. P. No. 910 of 1960), there will be an order quashing the direction contained in the impugned Order of the Government relevant to the petition to the effect that if any seat or seats reserved for candidates belonging to the Scheduled Castes and Scheduled Tribes remain unfilled, the same shall be filled by candidates of other Backward Classes, leaving the rest of the impugned Order intact, and a Writ of Mandamus will issue to the respondents containing the following directions :-

(a) The appropriate Selection Committee will first prepare a consolidated list of all applicants irrespective of castes or classes to which they belong, arranging them in the order of merit assessed in the light of the observations contained in this judgment (hereinafter called the First List).

(b) The Selection Committee will then prepare from out of the First List a Second List containing the names of applicants equal in number to the total number of seats to be selected for admission by the Committee arranging them in the order of merit, commencing with the first named in the First List.

(c) If the Second List so prepared contains the names of as many members of each of the three categories, viz., Scheduled Castes, Scheduled Tribes and other Backward Classes as the number of seats respectively reserved for them under the relevant impugned Order of the Government, then the said Second List will constitute the list of applicants finally selected for admission.

(d) If, in the case of any of the aforesaid three categories, viz., Scheduled Castes, Scheduled Tribes and other Backward Classes, the number of applicants belonging to such category in the Second List falls short of the number reserved for it under the impugned Government Order, additional number of applicants of that category required to make up that deficiency shall be selected in the order of merit to the extent available from out of that portion of the First List remaining after excluding the portion corresponding to the Second List.

(e) If and when such additional number of applicants belonging to one or more of the three categories viz., Scheduled Castes, Scheduled Tribes and other Backward Classes, come to be selected under the last preceding clause (d), an equal number of the names of applicants not belonging to any one of these categories, shall be deleted from out of the Second List counting from the bottom of the said List upwards.

(f) The Second List as finally settled in the light of the above directions shall constitute the List of applicants finally selected for admission into the relevant Educational Institutions.

(g) If the name of the petitioner finds a place in the said Final List, the respondents will take steps to admit him to such College as the appropriate Selection Committee may allot him to in accordance with the instructions of the Government relevant to the topic.

(h) In W. P. 758 of 1960, there will be a further direction that the petitioner's application shall not be rejected on medical grounds without first subjecting the petitioner to a

thorough medical examination.

78. Finally, we wish to make it clear that the admissions already made by the several Selection Committees shall not be disturbed, nor any of the students so admitted sent away by reason of this order.

79. There will be no order as to costs in any of these petitions.
Order accordingly.