

# MYSORE HIGH COURT

D.G. Viswanath

Vs

Chief Secretary

Writ. Petn. No. 1374 of 1963

(K.S. Hegde and Ahmed Ali Khan, JJ.)

30.09.1963

## JUDGMENT

**Hegde, J.**

1. These Writ Petitions relate to admissions to professional and technical colleges. Some of petitioners have applied for admission to the course leading to the Degree of Bachelor of Engineering, whereas others have sought admission to the Pre-Professional class in Medicine. Their applications have been rejected. Hence, each of them has prayed for a Writ of Mandamus and/or any other appropriate Writ or direction, directing respondents 1 and 2 to admit him to the Engineering College or to the Medical College as the case may be. In their affidavits, they have challenged the validity of Government Orders No. ED 75 TGL 63, Bangalore, dated 26-7-1963 (to be hereinafter referred to as Ex. C) and ED 84 TGL 63, Bangalore dated 26th July 1963 (to be hereinafter referred to as Ex. D). From the arguments advanced at the Bar, the following broad contentions emerge :

"(i) Ex. C is fraud on the Constitution; though the Order in question cannot be said to be patently and plainly outside the limits of the Constitutional authority conferred on the State in that behalf and thereby is ultra vires of the Constitution, it is yet bad in law as it transgresses in covert and latent manner the authority conferred on the State under the Constitution :

(ii) The classification adopted under Ex. D is unjust, irrational and was made with the sole object of conferring special favour on the students of the Karnatak University ignoring the just claims of the students of the Mysore University; and

(iii) The interview scheme set out in the letter written by the Under Secretary to Government to the Chairman of the Selection Committee on 6-7-1963 (to be hereinafter referred to as Annexure-IV) is an invalid scheme for various reasons."

In addition to these main contentions, several subsidiary contentions were advanced at the hearing. Those contentions will be set out and examined at the appropriate stages.

2. The respondents have repudiated the allegations made. They have asserted that the scheme set out in Ex. C., Ex. D and Annexure-IV is valid in law and was adopted with a view to carry out the mandate contained in Article 46 read with Article 15(4) of the Constitution.

3. Since 1958 the State of Mysore (to be hereinafter referred to as the State) has been endeavoring to make special provisions for the advancement of its socially and educationally backward classes of citizens, but every time when an order was passed in that behalf, its validity was challenged by Writ proceedings. It is not necessary to recapitulate the course of events ever since 1958. The same is elaborately set out in the decision of the Supreme Court in *M.R. Balaji v. State of Mysore*<sup>1</sup>, Suffice it to state that the college admission Writs have become an annual feature, in this Court, the number of Writ petitions, increasing year after year. In this year 473 Writ Petitions have been filed. 227 Writ Petitions relate to admission to the Engineering Colleges and 246 relate to admission to the Medical Colleges. Out of these, 71 are still of the stage of admission.

4. The order determining the backward classes made by the State on 31-7-1962, was quashed by the Supreme Court in Balaji's case, AIR 1963 SC 649. That decision laid down certain tests not finding out the socially and educationally backward classes. We shall have occasion to refer to that decision, in the course of this judgment, quite often.

5. We were told by the learned Asst. Advocate General, who represented the State, that in issuing Ex. C, the State was mainly guided by the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649.

6. We shall take up first the attacks levelled against Ex. C. leaving aside unnecessary portions, reads thus :

"Government have all along been anxious to make special provision for the advancement of socially and educationally backward classes. In the light of the several attempts made at classification and judicial pronouncements by various High Courts and the Supreme Court, Government have since reviewed the position for the determination of socially and educationally backward classes.

2. Backwardness for purposes of Article 15(4) of the Constitution must be social and educational. The problem determining who are socially and educationally backward classes is a very complex one. An elaborate investigation and collection of data and examination of such data which would inevitably involve considerable length of time may be desirable. But the obligation of the State to make special provision for the advancement of the backward classes is a pressing problem and cannot be postponed. Pending such elaborate study and investigation of the problem, Government consider that the classification of socially and educationally backward classes should be made on the following basis :

(1) Economic condition; and

<sup>1</sup> AIR 1963 SC 649

(2) Occupation.

3. Social backwardness.

It is a matter of common knowledge that poverty is one of the main factors contributing to social backwardness. The per capita income of the State for the year 1961 was ₹ 266 per annum. Taking an average family to consist of 5 members, the average incomes of the family comes to ₹ 1,330/- per year. Even though this income is low having regard to present day cost of living. Government are of the opinion that a family whose income is ₹ 1200/- per annum or less can be regarded as economically backward.

"In addition to economic condition, the other determining factor for social backwardness is occupation. Persons or classes following occupations of agriculture, petty business, inferior services, crafts or other occupations involving manual labour, are, in general socially backward. Their environmental conditions are also not conducive to progress either in the social sphere or in education. Amongst them, there is little or no urge for progress and improvement of their condition. The Government therefore list the following occupations (persons pursuing those occupations) as contributing to social backwardness :

(1) Actual cultivator;

(2) Artisan;

(3) Petty businessman;

(4) Inferior services (i.e. Class IV in Govt. Services and corresponding class or service, in private employment) including casual labour; and

(5) Any other occupation involving manual labour, Educational Backwardness :

It is well known that while the general level of education and literacy in the State is low, it is lower still among the poorer sections of the people. Especially among agriculturists, artisans, petty businessmen, persons in inferior services and persons following occupations involving manual labour the level of education and literacy is even lower, and they may reasonably be considered to be educationally backward.

5. Hence, classes of people whose annual income is ₹ 1200/- per annum or less and who are pursuing occupations set out in para 3 above can reasonably be classified as socially and educationally backward classes and are hereby so classified.

6. As regards the quantum of reservation, Government consider that it would be reasonable to reserve 30 per cent of the seats in professional and technical colleges and institutions for the backward Classes (who answer the criteria mentioned above). This reservation is in addition to the reservation of 15 per cent and 3 per cent to students belonging to Scheduled castes and Scheduled tribes in Mysore State."

7. It must be remembered that it is the State that has to determine who the socially and educationally backward classes are. It is true that the State's decision in this regard is open to judicial review. But in the very nature of things, the State is in a better position to deal with this great social problem. Further, law presumes that the State has acted in the interests of society.

Unless the petitioners are able to demonstrate that the order passed by the State is either ultra vires of the Constitution or is a fraud on the Constitution, the order (Ex. C) will have to be upheld. It is not sufficient if the petitioners show that the impugned order is not the very best that could have been passed. They must go further and show that the same directly or indirectly contravenes one or the other of the constitutional provisions or it is a fraud on the Constitution. This, I think, is the correct approach to the question at hand.

8. There were many sided attacks against Ex. C. Sri Vedanta Iyengar, the learned Counsel appearing for some of the petitioners took up an extreme position. He contended that the reservation for backward classes is not a constitutional must; Article 46 of the Constitution merely lays down a directive principle of the State policy, a policy unenforceable in Courts of law, sub-art. (4) of Article 15 is a permissive provision removing the obstacles in the way of the State from making any special provision for the advancement of socially and educationally backward classes of citizens; it is now well recognised by one and all including the Government that the problem of determining the socially and educationally backward classes is a very complex problem requiring elaborate investigation, collection of data, examination of the data collected and that process would inevitably involve considerable length of time. According to him, till the required data is collected, carefully classified, and scientifically dealt with, there can be no question of any reservation of seats for the backward classes. For this view of his the claimed support from the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649. He went further and resurrected the theory that unless a commission is appointed by the President under Article 340(1) of the Constitution and a copy of the report of the said commission is laid before the House of Parliament under Article 340(3), the State is not competent to make an order under Article 15(4). I have no doubt in my mind that Sri Vadantha Iyengar has taken a narrow view of a great and compelling social problem. His contention based on Article 340 was specifically rejected by the Supreme Court in Balaji's case, AIR 1963 SC 649. Therein it is stated that though the Constitution contemplated the appointment of a commission by the President, whose report and recommendations, it was thought, would be of assistance to the authorities concerned to take steps for the advancement of Backward Classes, the appointment of the Commission by the President and the subsequent steps that were to follow it, did not constitute a condition precedent to any action being taken under Article 15(4). The very contention advanced by Sri Vedantha Iyengar had been advanced before the Supreme Court but was rejected by it as being misconceived. The observations of the Supreme Court.

"The problem of determining who are socially backward classes is undoubtedly very complex, Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way".

do not lend support to the contention that till an exhaustive enquiry is made and the data collected is examined in a rational and scientific way, the State should fold up its hands and deny justice to backward classes. That observation was made merely to indicate the complexity of the problem. The Supreme Court in Balaji's case, AIR 1963 SC 649 nowhere laid down that till the completion of the required survey, the State was not competent to take interim decisions. The trend of that decision is against such a contention.

9. Sri Vedanta Iyengar and many others expatiated eloquently on the virtues of merit, and the dangers that would befall on the State if merit is not given a free play. They did not appear to be very much alive to the fact that there can be neither stability nor real progress if predominant sections of an awakened Nation live in primitive conditions, confined to unremunerative occupations and having no share in the good things of life, while power and wealth is confined in the hands of only a few and the same is used for the benefit of the sections of the community to which they belong. It is dangerous to be blind to the appalling conditions of many sections of people. It was said on behalf of the State and it was not denied by any one that unaided many sections of the people who constitute the majority in this State cannot compete with the advanced sections of the people, who today have the monopoly of education, and consequently have predominant representation in the Government services as well as in other important walks of life. It is cynical to suggest that the interest of the Nation is best served if the Barber's son continues to be a barber and a shepherd's son continues to be a shepherd. The limitations of the doctrine of *laisse faire* is now well known. We have pledged ourselves to establish a welfare State. Social justice is an important ingredient of that concept. That goal cannot be reached if we overemphasise the "merit theory". The preamble to our Constitution reminds us that our goal is to secure to all its citizens, Justice, social, economic and political; equality of status and of opportunity and to promote amongst the citizens of this country fraternity, assuring the dignity of the individual and the unity of the Nation. Advantages secured due to historical reasons cannot be considered as fundamental rights guaranteed by the Constitution. Nation's interest will be best served - taking a long range view - if the backward classes are helped to march forward and take their place in a line with the advanced sections of the people. Feudalism, in any form whatsoever is incompatible with democratic way of life. But at the same time we should not forget that it is against national interest to exclude from the portals of our Universities qualified and competent students on the ground that all or most of the seats are reserved for weaker elements in society. At this stage, I may usefully quote a passage from Balaji's case, AIR 1963 SC 649 :

"Therefore, in considering the question about the propriety of the reservation made by the impugned order, we cannot lose sight of the fact that the reservation is made in respect of higher university education. The demand for technicians, scientists, doctors, economists, engineers and experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by wholesale reservation of seats in all technical, Medical or Engineering Colleges or institutions of that kind. Therefore, considerations of national interest and the interests of the community or society as a whole cannot be ignored in determining the question as to whether the special provision contemplated by Article 15(4) can be special provision which excludes the rest of the society altogether."

I am not unaware of the fact that the problem before us is a very complex one and that it does not admit of any easy answer. It certainly calls for a balancing of the immediate requirements of the nation with its long range interests. Both the facts are equally important. It is unfair to adopt a sectional approach in these matters and that more particularly by the advanced sections of the people. The problem before us is essentially a human problem. Amongst the Members of the backward sections of the people, there is no urge for equal status and equal position. This urge

must be appreciated though it calls for some sacrifice on the part of the advanced sections of the people. Prudence lies in having foresight and yielding to the inevitable. As observed by the Supreme Court in Balaji's case, AIR 1963 SC 649 that no one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the Backward classes and the Scheduled Castes and Scheduled Tribes unless the backwardness and inequality from which they suffer are immediately redressed.

10. It was next urged that the tests enumerated for the purpose of determining the backward classes are vague and irrelevant. Some of the learned counsel contended that social and educational backwardness cannot be measured by the yardstick of poverty; facts of life show that even poor people belonging to particular castes are not socially looked down, it was said that education is wide spread even among the poorer section of some of the communities whereas it is wholly non-existent in certain communities. Some others urged that the limit of ₹ 1,200/- per year is too low, whereas others urged that it is too high. Some of the contentions advanced have no validity in view of the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649. In paragraph 23 of that judgment (at page 659 of the report) it is observed :

"Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat."

"Poverty test" is one of the tests laid down in that case. As mentioned earlier, the Government in formulating the policy set out in Ex. C 'appear', to have been greatly influenced by the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649. Hence the contention that "poverty test" is not a relevant test has to be rejected. The question as to what should be the limit of income in order to have the benefit of the "poverty test" is essentially a matter for the Government, Reasons sons are given in Ex. C. for fixing the ceiling at ₹ 1200/- per year. The reasons given therein cannot be rejected as being irrelevant. Even amongst the learned Counsel appearing for the petitioners, there was no unanimity or even near unanimity as regards the appropriate limit. The Commissioner for Scheduled Castes and Scheduled Tribes in his report for the year 1958-59 has suggested an annual income of ₹ 1,000/- as the limit.

11. It was next urged that the "occupation test" is not a relevant test; it has nothing to do with social and educational backwardness; that test was devised to tilt the scales against the students coming from the Brahmin community. The Government was charged with mala fides. It was lastly said that the "occupation test" was a mere device to get round the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649. "Occupation test" was one of the tests accepted and commended by the Supreme Court. This is what is stated in paragraph 24 of the judgment in Balaji's case, AIR 1963 SC 649.

"The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to

become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural areas fall within the purview of Article 15(4)."

There was a lack of responsibility in attributing mala fides to the Government. There can be hardly any doubt that cultivators, artisans, petty businessmen, persons serving in inferior services and those whose occupation involves manual labour are by and large socially and educationally backward. The accusation that the "occupation test" was evolved with a view to tilt the scale against the Brahmin Community appears to have been the result of blind prejudice. Obviously these who advanced that theory were unaware of the fact that there are numerous brahmins who are engaged in actual cultivation as well as in petty businesses. There are also artisans amongst them.

Now let us see how the scheme has worked. The following figures speak for themselves. The total seats in the Engineering Colleges of the State are 958. Out of these, 936 seats have been filled. Out of the selected students 307 which is about 1/3rd of the filled up seats, belong to the Brahmin Community which constitutes 4.28% of the population of the State. (I have taken the population figures from Dr. Nagan Gowda Committee's report). Out of the 307 Brahmin students selected 22 were considered as coming from the Backward classes group. This shows how irresponsible the criticism has been. As observed by Kaka Kalelkar in his covering letter to the report of the Backward Classes commission

"We have to recognize the painful fact that all the efforts of the social reformers belonging to the upper classes have been more than counter-balanced by the blind selfishness and traditional justification of the upper classes."

The misfortune is that while the members of each community complain that the members of the communities other than their own are communal, they feel that the members of their own community are not sufficiently communal. The vicious circle can be broken only if the members of the Community who have benefited by the existing social order first shed their communal thinking.

12. It was next urged that the reservation of 30% of the available seats to the backward classes is an excessive reservation. According to the State, the backward classes constitute very much more than 50% of the population. Kaka Kalelkar had recommended that 70% of the available seats in Institutes of High Education should be reserved for the backward classes. The Supreme Court in its judgment in Balaji's cases AIR 1963 SC 649 has stated that under no circumstance more than 50% of the seats should be reserved for the backward classes. Scheduled Castes and Scheduled Tribes. From the material before us, it is not possible to come to the conclusion that the reservation, made is excessive.

13. Sri L.G. Havanur, who appeared for some of the petitioners, made a forcible plea to reject the scheme adumbrated in Ex. C on the ground that it is not in the interest of the really backward classes. According to him, the expression "backward classes" found inference only to people

belonging to certain castes which are considered as backward. He contended that caste is the only true basis on which the Hindu backward classes can be classified; no other basis would carry out the mandate of the Constitution; as the classification under Ex. C has ignored the caste basis, the scheme put forward should be rejected as being inconsistent with the intendment of the Constitution. He urged that the word "class" has a historical meaning in India, it has always been equated to caste hence there is no justification to fallback on the dictionary meaning. In this connection he invited our attention to the decision of the Bombay High Court in *Narayan Vasiidev v. Emperor*<sup>2</sup>, Therein, the learned Judges were called upon to interpret the meaning of the expression "classes of His Majesty's subjects" found in Section 153-A of the Indian Penal Code. Dealing with that expression, Wassoodew, J. observed thus :

"In my opinion, the expression, "classes of His Majesty's subjects" 11 Section 153-A "of the Code is used in restrictive sense as denoting a collection of individuals or groups bearing a common and exclusive designation and also possessing common and exclusive characteristics which may be associated with their origin, race or religion, and that the term 'class' within that section carries with it the idea of numerical strength so large as could be grouped in a single homogeneous 'community.'"

Sri Havanur further invited our attention to two decisions of this Court, namely *Ramakrishna Singh Ram Singh v. State of Mysore*<sup>3</sup>, and *S.A. Partha v. State of Mysore*<sup>4</sup>, wherein this Court held that the classification of backward classes on the base of caste was not invalid.

14. Sri Havanur next invited our attention to Dr. R. Nagan Gouda Committee's Report in which caste had been adopted as the sole basis for classifying the backward classes. He then invited our attention to certain passages in pages 41 and 42 of the Report of the Backward Classes Commission. In paragraph 10 of that report, the Committee

<sup>2</sup> AIR 1940 Bom 379

<sup>4</sup> AIR 1961 Mys 220

<sup>3</sup> AIR 1960 Mys 338

says :

"We tried to avoid caste but we found it difficult to ignore caste in the present prevailing conditions. We wish it were easy to dissociate caste from social backwardness at the present juncture. In modern time anybody can take to any profession. The Brahman, taking to tailoring, does not become a tailor by caste, nor is his social status lowered as a Brahman. A Brahman may be a seller of boots and shoes, and yet his social status is not lowered thereby. Social backwardness, therefore, is not today due to the particular profession of a person, but we cannot escape caste in considering the social backwardness in India."

In paragraph 11, it is stated

"It is not wrong to assume that social backwardness has largely contributed to the educational backwardness of a large number of social groups".

Finally in paragraph 13, the Committee concludes with following observations :



"All this goes to prove that social backwardness is mainly based on racial, tribal caste and denominational differences."

He next took us to the covering letter of Kaka Kalelkar, the Chairman of the Backward Classes Commission. He pointed out to us the glaring inconsistencies between the recommendations made by the majority of the Committee including Kaka Kalelkar and those made by Kaka Kalelkar behind the back of the Committee, in his covering letter. According to Sri Havanur, even the recommendations made by Kaka Kalelkar in his covering letter cannot be enforced except on caste basis. In particular he invited our attention to paragraph 58 of the letter wherein it is stated :

"The result of our inquiry is that caste-consciousness, caste loyalties and caste aspirations, have increased throughout the country....."

15. The question under consideration has roused strong sentiments. There is an air of self righteousness in every quarter and that has given rise to injured feelings. Each section thinks that the other section is in the wrong; it identifies its interest with the national interest. It is inevitable that in tackling such social problems there are strong differences of opinion. Each one approaches that problem from his own point of view which point of view must have necessarily resulted from his background, his knowledge of men and matters and not to a small extent, the interests of the sufferings of the class to which he belongs. In a matter like this it is difficult to have a clear picture of the problem from a distance. As mentioned by the Backward Classes Commission, the problem differs from State to State. It is not a problem that can be tackled purely from an ideological plane. Nor can it be reduced to a legal quibble. Its solution called for statesmanship of high order. As mentioned by Kaka Kalelkar there is need to inaugurate

"a nationwide social revolution, not confined to the upper classes, neither only to Hindus alone." But, the real question is how to do it. It can be definitely asserted that there is no ready made solution. In pronouncing on such a social question, nay a human problem, we should not forget our own limitations. We should, while in no manner limiting the scope of our judicial review, be dictated by our sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of our way of thinking but for all and that the Cabinet representing the majority in the legislature democratically elected has taken the impugned decision.

But the question posed is no more *res integra*. It is concluded by the decision of the Supreme Court in Balaji's case AIR 1963 SC 649 wherein it has been definitely laid down that caste cannot be made the sole basis for making the classification in question. Sri Havanur made strenuous efforts to persuade us to adopt "caste" as the only basis of classifying. He contended that the Supreme Court's observations in Balaji's case, AIR 1963 SC 649 that caste cannot be made the sole basis for classification were obiter and that there is need to reconsider the question afresh. I am unable to agree that the observations in question are obiter. Even if they are obiter, they are binding on this Court.

16. Realizing the futility of his attempts to persuade us to accept the "Caste" as the sole basis of classification of the backward classes, Sri Havanur next proceeded to build new arguments on the basis of the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649. He urged that even the Supreme Court has laid down that "Caste" is a relevant basis, nay an important basis, but this aspect was lost sight of by the State in making the classification under Ex. C; therefore the classification made according to him is an arbitrary one. In support of his arguments, he quoted several passages from the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649. In paragraph 10 of that decision, Gajendragadkar, J. who spoke for the Court, dealing with the recommendations of the Backward Classes Committee observed thus :

"The Committee realised that, in substance, the problem of backward classes is really the problem of Rural India (p. 55). It appears that having considered several criteria which may be relevant in determining which classes are backward, the Committee ultimately decided to treat the status of caste as an important factor in that behalf, and it is on that basis that it proceeded to make a list of backward communities which were specified in Volume II of the Report."

In paragraph 23 of that judgment, the learned Judge stated :

"That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens."

According to Sriyuths Havanur and A.B. Mariappa the Supreme Court has laid down four bases for determining the socially and educationally backward classes, viz., (1) "Occupation", (2) "Income" (3) "Residence" and (4) "Caste" in the case of Hindus; but the State has altogether ignored the "Caste" basis; and hence, the scheme set but in Ex. C. is an invalid scheme. The learned Asst. Advocate General met the arguments of Sriyuths Havanur and Mariappa, in the following manner. He urged that on a true reading of the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649, it would be seen that "caste" basis, if adopted, would break down in its application, particularly in view of the pronouncement of that Court that there cannot be several categories of backwardness; hence the State came to the conclusion that it is not a firm basis; consequently it adopted the test mentioned in Ex. C. His alternative contention was that even if the classification made by the State in Ex. C is considered to be an imperfect classification, the same cannot be set aside as being a fraud on the Constitution. I have no hesitation in agreeing with Sri Havanur that the classification made by the State is a very imperfect classification. It is clear from the decision of the Supreme Court in Balaji's case, AIR 1963 SC 649, that in the very nature of things, there can be no satisfactory classification of the

backward classes belonging to the Hindu religion, if we ignore the "Caste" basis. The Supreme Court has very specifically stated that "Caste" in relation to Hindus is a relevant factor to be considered in determining the social "backwardness of groups or classes of citizens. The Supreme Court has nowhere stated that the "Caste" basis should not be adopted in determining the socially and educationally backward classes. If I understand the Supreme Court's decision aright, what that decision says is that the "caste" basis is undoubtedly a relevant, nay an important basis in determining the classes of backward Hindus but it should not be made the sole basis; that test may be adopted along with such other tests as "occupation test", "poverty test" "residence test" etc. The Supreme Court has also stated that in applying the caste basis, the State can only include those castes which are without doubt socially and educationally backward. The Court has also given guidance in the matter of determining what castes can be considered socially and educationally backward. There can be no dispute that most if not all the castes that were classified as "most backward" in Dr. Nagan Gouda Committee's Report can and ought to have been taken into consideration in making the classification. There is hardly any doubt that the scheme set out in Ex. C has not helped the really backward classes amongst the Hindus. For example, out of the 142 seats reserved for the backward classes in Engineering Colleges, Kurubas who constitute 6.88% of the population of the State have obtained 2 seats in addition to 6 seats obtained in the merit pool. Bedars who constitute 4.74% of the population of the State, have obtained 1 seat in the backward classes pool. They obtained 3 seats in the merit pool. We have earlier noticed the seats obtained by the Brahmin students, Lingayets, who constitute 15.57% of the population of the State have obtained 35 seats, in the backward classes pool. Vokkaligas who constitute 12.98% of the population of the State have obtained 35 seats in the backward classes pool. In addition the Lingayets have obtained 111 seats and Vokkaligars 32 seats in the merit pool. The figures mentioned above are tell-tale and they support the contention of Sriyuts Havanur and Mariappa that the classification made in Ex. C has not helped the really backward classes. Again it is difficult to say that the students who have been selected in the "Backward class pool" are educationally backward. Let us take for example the students selected from the backward class pool for admission to the Engineering Colleges of the Mysore University. Out of the 181 students selected a large number of them secured an average of 70% or more in the optional subjects (which are the only subjects taken into consideration); bulk of them obtained more than 60%. No student getting less than 55% was selected. From the foregoing it is clear that the scheme adopted by the State is a very imperfect scheme. Hence I agree with Sri Havanur that in addition to the "occupation" and "poverty" tests, the State should have adopted the "caste" test as well as the "residence" test in making the classification. It may be that some of the castes which are considered socially backward, generally speaking, may not be educationally backward on the basis of the tests laid down by the Supreme Court. But sections of those castes residing in particular places may be educationally backward. These sections can be included amongst the backward classes.

17. But the real question is, can we strike down the classification made under Ex. C merely because it is not a perfect classification? It is not said that the classification made is ultra vires of Article 14.

18. Can it be said that the classification made under Ex. C is a fraud on Constitution in the sense that it is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf. As observed by this Court in S.A. Partha's case, AIR 1961 Mysore 220 that 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 criteria not shown to be unreasonable. Neither of the two tests adopted by the State can be considered as irrelevant. As observed in *Kangshari Haldai v. State of West Bengal*<sup>5</sup>, in considering the validity of any classifications the only true tests are is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object ? If both these tests are satisfied the Statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied, the Statute must be struck down as violative of Article 14. In the instant case, the classification of socially and educationally backward classes is a rational one and is based on intelligible differentia and the basis of the differentiation has rational nexus with the policy intended to be implemented and the object tried to be achieved. Hence, it cannot be struck down. But I earnestly hope that soon the State will make a more appropriate classification lest its *bona fides* should be questioned. As things stand I am unable to, hold that the classification made in Ex. C is an invalid classification.

19. We shall now take up the validity of the order in Ex. D. As per that order, the seats in Technical and Professional Colleges in the State were distributed between students of the Mysore University and those of the Karnatak University. Till this

<sup>5</sup> AIR 1960 SC 457

order was passed, the selections to the professional and Technical Colleges affiliated to the Mysore University were mainly made from the students who passed out of the Mysore University. A similar rule was applied in the matter of selections to the Colleges affiliated to the Karnatak University. But in Exhibit D it is laid down :

"For admission to Technical and Professional Colleges run by the Government of Mysore of receiving grants-in-aid from the Government of Mysore, students who have passed different qualifying examinations conducted by different Universities and authorities are eligible.

Government have decided that seats in the first year classes of the aforesaid colleges, after deducting the seats reserved for children of defense personnel and students from other States, should be distributed in the following proportions :

- (i) Students who have passed pre-University examination held by the Mysore University... 60%
- (ii) Students who have passed Pre-University examination held by Karnatak University... 32%
- (iii) Students who have passed other examinations which are considered as equivalent to P.U.C. Examination.... 8%

Reservation for Scheduled Castes Scheduled Tribes and other backward classes in accordance with "the Government Order No. EX 75 TGL 63 dated the 26th July 1963 shall be made in each of the aforesaid groups of seats." In view of this order, it was said that the students coming from the Karnatak University have secured 86 more seats in the Engineering Colleges, and 37 more seats in the Medical Colleges, than they would have got if the old arrangement had continued.

The Classification made under Ex. D was assailed on various grounds. It is not necessary to consider the grounds of attack in view of subsequent events. In response to certain suggestions made by us at the hearing, the State has come forward with an offer to make available to the students of the Mysore University 86 more seats in the Engineering Colleges and 37 more seats in the Medical Colleges. They have filed a memo to that effect. The memo filed in W.P. No. 1334/63 reads thus :

"The Government passed Order N/o. KD84 TGL 63, dated 26-7-1963 with a view to securing equitable distribution of seats between students who passed from two different universities i.e. Mysore and Karnataka Universities which have different subjects and schemes of study and examination for the Pre-University Course and whose standards, it is difficult to compare.

2. As some of the students who have passed qualifying examinations of the Mysore University and have secured high marks, have not been selected for admission to Engineering Colleges, the Government will now provide seats in Engineering Colleges to 86 more students who have passed qualifying examinations of the Mysore University.

3. The selection for these 86 seats will be made on the basis of aggregate of examination and interview marks, providing a reservation of 30 percent of the seats for backward classes.

4. The number of seats 86, is calculated on the following basis;

(i) Number of seats allotted to students who passed the qualifying examinations of Karnataka University :

(ii) Number of seats in the two Engineering Colleges in the Karnataka University within the purview of the Selection Committee.....211

(iii) Seats allotted to students from Goa...10

(iv) Seats secured by students who passed from Karnataka University in excess of the number of seats in the Engineering Colleges of Karnataka University.....86

5. The respondents submit that the disadvantage, if any, to students who passed from Mysore University, as a result of the above Government Order is only to the extent of 86 seats.

6. The respondents will arrange to admit 86 more students who have passed from the Mysore University in the manner stated above." So far as the Medical Colleges are concerned, a memo on similar lines has been filed in W.P. No. 1403 of 1963 offering 37 more seats to the students coming from the Mysore University. In addition to these seats, we were informed that there are 22 vacant seats in the Engineering Colleges. The State is willing to fill up those seats in accordance with the direction given by this Court. Those vacant seats, we were told, are mostly in the Colleges affiliated to the Mysore University. Further, many students of the Mysore University who have secured high marks have not been able to secure seats in the Engineering Colleges. Bearing in mind all these aspects we direct that these 22 seats also should be made available to the students of the Mysore University.

20. In view of the changed circumstances set out above, we have not thought it necessary to

pronounce on the validity of Ex. D. It may be remembered that the validity of the arrangement that was in force prior to the issue of Ex. 33 was never questioned. It is also clear that there are fundamental differences as between the courses of studies in the two Universities and therefore, it is not possible to have a common pool.

21. This takes us to Annexure-IV, which has been the target of bitter criticism. It is a communication sent by the Under Secretary to Government, Education Department to the Director of Technical Education in Mysore, Bangalore, who was the Chairman of the Committees which, selected students for Engineering Colleges. A similar letter was sent to the Chairman of the Committee which selected students for admission to the Medical Colleges. It reads thus :

"Sir,

Sub : 'Award of marks for the Interview' to Engineering Colleges and Technical Institutions. With reference to your letter No. AAS. 44DW/63/J 2491 dated the 25th June 1963, on the subject mentioned, above, I am directed to state that Government have decided that 25 per cent of the maximum marks for the examination in the optional subjects taken into account for making the selection of candidates for admission to, Engineering Colleges, shall be fixed as interview marks.

2. I am further to state that the Selection Committee are authorised to allot marks for interview of the candidates as fixed above, having regard to the following factors :

1. General knowledge.
  2. Aptitude and personality.
  3. Previous academic career, including special distinctions, etc.
  4. N.C.C.A.C.C, etc.
  5. Extra curricular activities including sports, social service, debating, dramatics, etc.
3. The interview marks as fixed in para 1 above shall also apply for selection of candidates for Diploma and Certificate Courses in Government Polytechnics and for Degree Course in Textiles." There was some controversy as to who authorized the issue of this communication. It is now made clear by the affidavit filed by Sri B.R. Verma, Deputy Secretary to Government, Education Department that the communication in question was issued as per the orders of the Minister for Education. On the subject under consideration, no Notification under Article 166 of the Constitution had been issued. The "Interview" scheme set out in Annexure-IV is more or less similar to the schemes that prevailed in the past excepting as regards the marks allotted for "interview".

22. The very first objection advanced against Annexure-IV is that the State was not competent to prescribe additional qualifications in the matter of selection to the Technical and Professional Colleges. It was urged that the required qualifications can only be prescribed by the University as contemplated by Sections 23(b); 43 and 50 of the Mysore University Act, 1956. In support of this contention reliance was placed on the decision of this Court in W.P. No. 519 of 1959 (Mys). That decision does not bear on the point under consideration. All that it lays down is that the Government has no competence to prescribe a qualification different from that prescribed by the University. It does not lay down that the Government in the matter of admitting students to

Technical and Professional Colleges cannot provide for selection by laying down tests for making the selection. The qualification prescribed by the University is only the minimum requirement. The managements of the Educational Institutions concerned can insist on additional qualifications in the matter of selecting students for admissions to then institutions. So long as the minimum qualification prescribed by the University is adhered to, there can be no objection even, if they prescribe a selection examination. For this conclusion of mine support is available from, the decision of this. Court in Partha's case, AIR 1961 Mysore 220.

23. It was next urged that the Government has no competence to regulate tile admission to the Mysore University Engineering College at Bangalore and to the aided Institutions. No objection to this regard has been taken either by the University or by the Managements of the aided Institutions. In this connection the Government has produced Order No. ED 319 TOL 57 dated, Bangalore the 10th June 1960. The preamble to that order says :

"The question of evolving a common set of rules of admission to Engineering Colleges in the State was under the consideration of Government for some time past.

(ii) The University Education Integration Committee has also indicated in its report that it is desirable to have a selection Committee to interview the candidates for candidates for admission to Professional Colleges.

(iii) With a view to achieve uniformity in the procedure for admission of candidates to the several Engineering Colleges in the. State, a meeting of the representatives of the Private Engineering Colleges and the Registrars of the two Universities was held on the nth April 1960. It was proposed at the said meeting that selection of candidates for admission to Engineering Colleges except Regional Engineering College Suratkal, Mangalore, may be made by a Central Committee, to be constituted by Government."

The order issued in pursuance of the resolution passed at the meeting reads thus :

"After careful consideration of all the aspects of the case, Government are pleased to direct that the selection of candidates for admission to the following Government University and Private Engg. Colleges in the State shall be made by the selection Committee appointed by Government.....

2. It is accordingly ordered that there shall be two selection committees, one for the Engineering Colleges in the jurisdiction of the Mysore University and the other for those in the jurisdiction of the Karnataka University.

I. The Committee for selection of candidates for the Engineering colleges in the jurisdiction of the Mysore University shall be as follows.....

II. The Committee for selection of candidates for the Engineering Colleges in the jurisdiction of the Karnataka University shall be as follows.....

3. Pooling of Seats : (a) All the seats available in the Engineering College referred to above, excluding the number of seats reserved to be filled by the managements concerned in respect of

the Private Colleges, shall be filled in by the said selection committee.

(b) Each of the Private Colleges referred to above excluding the B.M.S. College of Engineering Bangalore, will have 20 per cent of the total number of seats reserved for being filled in by the management at its discretion. In the case of the B.M.S. College of Engineering, Bangalore 50 per cent of the total number of seats shall continue to be reserved for being filled in by the management concerned at its discretion. These reservations will however be available during the current academic year viz. 1960-61, the position being reviewed thereafter.

4. (a) The Selection Committees shall interview the candidates at places to be selected by them.

(b) A maximum of 20 marks is fixed as interview marks to be awarded by the Selection Committee for assessing the suitability of the candidate for engineering profession having regard to the following factors;

(i) Aptitude, (ii) General ability and physical fitness, (iii) Sports or NCC activities or scouting or other similar activities, (iv) Extra curricular activities such as social service etc.,

(c) The Selection Committee shall select candidates for admission adhering to the reservation of seats for scheduled castes, scheduled tribes and other backward classes prescribed by the Government from time to time in this behalf.

(d) The selection committees shall allot a candidate to the Colleges preferred by him as far as practicable. The allotment made by the Committee shall be final.

5. The seats reserved for being filled up by the Managements of the private Colleges concerned will be filled up after the selection committees complete their selection and communicate the allotment of candidates to the colleges concerned.

6. Application for admission to the Engineering Colleges referred to above shall be called for every year by the Director of Technical Education in Mysore, Bangalore. A form of application for the purpose shall be prescribed by the Director.

7. During the current academic year, however, the applications already received by each of the above mentioned Colleges, shall be collected and placed before the Committee."

24. From this order it appears that with the consent of the Managements of various Professional and Technical Colleges, the Government took over the responsibility regulating admissions of students to the Colleges in question. This arrangement admittedly was not objected to either by the University or by the management of any private aided Institution, at any time. In fact in 1960-61, 1961-62, 1962-63, the Vice Chancellor of the Karnatak University was the Chairman of the Selection Committee which selected students to the Technical and Professional Colleges affiliated to the Karnatak University. Similarly, the Vice-Chancellor of the Mysore University was the Chairman of the Selection Committee which selected students to the Technical and Professional Colleges affiliated to the Mysore University. In the current year (1963-64) the Registrar of Mysore University was a Member of the Selection Committee appointed for



selecting students for admissions to the Colleges affiliated to the Mysore University. Similarly the Registrar of the Karnatak University was a Member of the Selection Committee which selected students for admissions to the Colleges affiliated to the Karnatak University. Selections were made without any objection from any quarter. The petitioners cannot now be permitted to object to the arrangement made for common selection. It is not the case of any of the petitioners that he or she had applied for admission to any college as such. On the other hand all of them had applied to the Selection Committee appointed by the Government. That being so, they are precluded from questioning the competence of the Committee appointed.

25. At this stage an incidental controversy that arose at one stage may be mentioned. It was urged that in view of Section 51 of the Mysore University Act, 1956, the classification made under Ex. C cannot be made applicable to the University Engineering College at Bangalore. But this submission was evidently made without the knowledge of the fact that the Chancellor of the University had promulgated on 25-7-1963 an order similar to the one issued under Ex. C.

26. Another contention advanced is that the Order communicated under Annexure-IV is invalid as the same does not conform to the requirements of Article 166 of the Constitution. It is now established that the Order in question was made by the Minister of Education. The subject in question undoubtedly is in the portfolio of the Minister. It is true that the draft of the order was made by the Under Secretary. But the Deputy Secretary has sworn to the fact that the draft order was initialed by the Minister. Under Rule 65 of the Government of Mysore Secretariat Manual, it is laid down that

"Drafts in important and complicated cases and all drafts to the Government of India except those of purely formal nature should be prepared by the Under Secretary."

Rule 66 says :

"The draft may be in the form of an order, a Letter a Memorandum, a Notification or a Telegram." Rule 70 prescribes :

"The term "Government have directed", "I am directed by Government" should be reserved for cases where the orders have been passed by the Council or a Minister has given specific directions." I have referred to these Rules because Annexure-IV says :

"I am directed to state that Government have decided of which means that the order contained in Annexure-IV was an order made by Government. The Supreme Court has laid down that the provision-contained in Article 166 is only directory and not mandatory. In *Dattatraya Moreshwar v. State of Bombay*<sup>6</sup>, the Supreme Court laid down, accepting the arguments of the learned attorney-General that an omission to make and authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal, for the provisions of that Article like their counter part in the Government of India Act, are merely directory and not mandatory, as held in *J.K. Gas Plant Manufacturing Co. (Rampur) Ltd. v. Emperor*<sup>7</sup>,

27. Now that we are satisfied the order in question has been made by the Minister who was

authorized to make it under, the Rules of Business, mere fact that the same has not been expressed in the manner contemplated in Article 166 is not sufficient to hold that the order in question is invalid. If an order does not comply with the

<sup>6</sup> AIR 1952 SC 181

<sup>7</sup> 1947 FCR 141 at p. 154-9 : (AIR 1947 FC 38 at pp. 41-43)

requirements of Article 166, then the Government is put to the task of proving the existence of that order. Dealing with that aspect, this is what the Supreme Court observed in the above case :

"Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself."

Similar was the view taken by the Allahabad High Court in *Hari Das Murtdhra v. State*<sup>8</sup>,

28. The contention that the Selection Committees were packed bodies deserves no serious consideration. The Members of the Selection Committees are academicians intimately connected with higher education in Technical and Professional courses and they occupy responsible position in academic or technical circles.

29. It was urged that there was no justification for increasing the interview marks. It is wrong to assume that the only way of testing the merit of a candidate is by having a written examination, viva voce as well as "interview" if properly conducted are undoubtedly of great assistance in finding out the real merit. There is loom for dishonesty in every sphere of activity. That does not depend on the scheme of things but on the character of the persons who are entrusted with the task. This is equally true of written examinations. We are unable to hold that the allocation of 25 per cent marks for "interview" is either excessive or arbitrary. We are told that the Government increased the "interview" marks because of the changed circumstance in the country. They wanted to give more importance to extra curricular activities and that particularly for N.C.C., and A.C.C. training. From the material on record, we are unable to conclude that the Government was actuated by any unfair consideration in increasing the "interview" marks. The insinuation that the "interview" marks have been enhanced with a view to tilt the scales against merit has to be rejected as being unworthy of consideration.

30. A serious point was made of the fact that numerous students who have come out of the Mysore University and who have secured high marks have failed to get seats in the Technical and Professional Colleges. Our attention was invited to the fact that a large number of students who have secured an average of 70% marks or more in the optional subjects, have failed to secure admissions to the Engineering Colleges. At first that feature surprised and pained me. But, on examining the necessary data placed before us, it was clear to me that I was very much behind times. Out of the 6000 and odd students who appeared in science subjects in the pre-university examination of the Mysore University, as many as 668 students have secured an average of more than 70% marks in their optional subjects. Over 900 and odd students have obtained an average of over 65% marks. This shows that either the present day students are extraordinarily bright or the system of marking has

completely changed from, the times with which I am familiar. As mentioned earlier, very few Mysore University students securing less than 70% marks on the average in the optional subjects have secured seats in the Engineering Colleges in the "merit pool". Even in the "backward classes pool" most of the students who have been selected for admissions have secured on, an average of more than 60%.

31. The contention that the tests laid down, in Annexure-IV are ambiguous or at any rate not objective does not appear to be correct. It cannot be denied that the last three tests laid down namely "Previous academic career", training in "N.C.C. A.C.C., etc." and "extra curricular activities, including sports, social service, debating,, dramatics, etc.," are clearly objective tests. The "general knowledge" test and "aptitude and personality" tests are the usual tests prescribed for "interview". They are sufficiently objective in character. Therefore, this contention also fails.

32. It was said that the "interview" was a farce; usually it lasted only for a minute or two; and by and large only one or two questions were put to the candidates. In the affidavit filed by the Chairman of the Selection Committees, it is stated that the "interview" of each candidate generally took 2 to 3 minutes; "generally 3 to 4 questions were put to each candidate to test his general knowledge, aptitude, the practical application of scientific knowledge to, every day life, and mental alertness and ability to express himself clearly, the last two factors being relevant for the criterion of personality. While, each candidate was interviewed, one of the members of the Selection Committee was examining the Certificates produced by candidates in support of their extra-curricular activities like N.G.C., or A.C.C., sports, debating, dramatics and social service." While I am unable to agree with the contention that the "Interview was a make believe one, I have no doubt in my mind that the "interview" should have been more thorough and systematic than what had happened, particularly in view of the fact that as much as 25% of the marks are reserved for the "interview", I shall presently safe out the defects in the "interview" noticed by us just at present it is sufficient to say that the "Interview" has not been as satisfactory as it should have been in making this statement I am not unaware of the fact that the Committees had to "interview" a large number of students and the time available to them was comparatively short. There is no denying of the fact that the Committees were working under pressure. But still the committees should not have overlooked the fact that the "interview" held by them had a decisive effect on the future of those who appeared before them.

33. It was vehemently urged that the scheme set but in Annexure-IV should be struck down on the grounds that it was not only arbitrary but it also conferred on the Committees unguided and uncontrolled powers. Our attention was invited to the fact that the Government had not divided the "interview" marks between several heads mentioned in Annexure-IV. It was said that 25% of the marks were left in the hands of the Selection Committees without any guidance; the Committees could plump those marks on any candidate of their choice whether he had any of the qualifications mentioned or not and at the same time it was possible for them not to award any mark or to award wholly inadequate marks, even if a candidate possessed all or most of the qualifications mentioned therein. Such a power, it was said, is a dangerous power and therefore we should strike it down.

It is true that Annexure-IV does not specifically mention the marks allotted for each head. But from that circumstance it cannot be held that the Government had conferred an unguided power on the Committees. In the absence of specific allocation of marks for each head, it must be

presumed that the Government considered that each of the heads mentioned in Annexure-IV as being equal in importance to any other. In other words, we have to infer that the intention of the Government was that each one of those heads should carry 1/5th of the "Interview" marks. In that view, we reject the contention that unguided power was conferred, on the Selection Committees.

34. But the contention of Sri. V.L. Narasimha Murthi and others, that the Selection Committees had misinterpreted the scope of the powers conferred on them under Annexure-IV and have not exercised the power conferred in a reasonable manner appears to have force. It is seen from the counter-affidavit filed by the Chairman of the Selection Committees that they had acted under the impression that 25% of the marks were left in their hands to be given in the manner they considered best. Admittedly, they did not deal with the several heads separately. The procedure followed by the Committees can be best gathered from the affidavits filed by the Chairmen of the Committees. This is what they say :

"Separate marks were not assigned in respect of, each of the five criteria laid down in the Government's letter. After taking into account all these criteria consolidated marks were allotted to each candidate in the interview."

From this it is clear that the Selection Committees have misused the powers conferred on them. On their own admissions, it is seen that they had not adopted objective standards. As observed by James Hart in his "An Introduction to Administrative Law" (at page 180) :

"A test or examination, to be competitive, must employ an objective standard or measure. Where the standard or measure is wholly subjective to the examiners, it differs in effect in no respect from an uncontrolled opinion of the examiners and cannot be termed competitive."

35. The contention that the "Interview" is vitiated for the reason that no record of the "interview" was kept overlooks the magnitude of the work involved. To accept that contention is to prescribe an impassible condition. There is no justification for insisting on that condition.

36. Several instances were brought to our notice (in view of the fact that we are directing a fresh "interview", we think, it inadvisable to refer to individual cases except one) in which the low marks given at the "interview" cannot be explained by any reasonable hypothesis. Instances were brought to our notice where even those applicants who were proved to possess at least 3 out of the 5 tests laid down in Annexure-IV have secured as low as 10 marks or even less out of 75 marks. The claims of many candidates to be considered as belonging to "backward" classes were rejected without any stable reasons. Admissions said to have been made by several candidates on the basis of which their claims for preference in one respect or other were rejected, have not been recorded. The concerned parties deny having made such admissions. In matters like these, it is dangerous to depend solely on the memory of the Selection Committee members. Nativity Certificates of some of the candidates have been rejected without any apparent reason. We came across a case where a candidate's father had died and his mother was his sole surviving parent. It is said that the mother is a coolly by profession. But for the last several months she is bed ridden due to cancer operations. The Committee appears to have rejected the claim of the candidate to

be treated as belonging to the backward classes on the ground that she had no occupation at the time of the application as well as at the time of the interview. If this complaint is correct, then the Committee has clearly misconstrued the meaning of the expression "any other occupation involving manual labour" found in Ex. C. In order to come within that clause, the true test is the permanent occupation of the parent or the guardian. Any temporary inability to carry on the permanent occupation is not a disqualification. The case of the petitioner in W.P. No. 1880/63 (Srinivasa Prabhu) stands on a separate footing. He is a B.Sc.; student. It is said that he had applied for admission to the first year M.E.B.S. We were informed that no student was admitted to the First year M.B.B.S. this year. But the applications of B.Sc., candidates were considered for admission to the pre-professional course. What the Committee appears to have done is that in considering the case of this petitioner for admission to the Pre-professional course, they had taken into consideration his B.Sc. marks and not his P.U.C. marks. This is clearly erroneous. They should have considered the marks obtained by him in the P.U.C. examination. The omissions and mistakes pointed out above are likely to have resulted from the fact that the Committees were working under great pressure. But that is no justification for denying justice to the petitioner. After carefully considering the numerous individual cases and bearing in mind the wrong interpretation placed by the Committees on the scope of Annexure-IV, I have come to the conclusion that the "interview" I held, must be held to have been vitiated. Therefore, the same had to be quashed.

37. In the result, these petitions are allowed : the "interviews" impugned in these proceedings are set aside and the Selection Committees are directed to interview the petitioners afresh in accordance with the directions given above. If there is a claim that a particular petitioner belongs to the "backward classes" the Committee will go into that question afresh. So also with any case where there is dispute as regards the nativity of any of the petitioners. The case of the Petitioners in W.P. No. 1880 of 1963 (Srinivasa Prabhu) will be considered afresh in the manner directed above. After interviewing the petitioners afresh, their cases should be considered for admission in accordance with the scheme laid down in Ex. C, Ex. D and Annexure-IV but subject to the directions given above about the vacant seats and the additional seats made available.

38. In the circumstances of these cases, there will be no order as to costs.

**Ahmed Ali Khan, J.**

39. I agree.

Petitions allowed.