MYSORE HIGH COURT

Subhashini K.

Vs

State of Mysore

Writ Petn. No. 1862 of 1964 (connected with W. P. Nos. 1863, 1864 and 1880 of 1964)

(K.S. Hegde and M. Santhosh, JJ.)

09.12.1964

JUDGMENT

K.S. Hegde, J.

1. In these petitions, under Article 226 of the Constitution, the petitioners who were applicants for admissions to one or the other of the Medical Colleges under the Management of the Government pray that this Court may be pleased to (i) quash by the issue of a writ of Certiorari or any other appropriate Writ or direction as the case may be, the Order of the Government dated 29-6-1964; and (ii) to direct by the issue of a Writ of Mandamus or any other appropriate Writ, the respondents to admit the petitioners to any one of the Medical Colleges managed by the State, preferably to the College to which he or she had shown preference in his or her application for prosecuting their studies in the Pre-Professional Course in Medicine leading to M. B. B. S. degree.

2. The Petitioners herein have passed in the Pre-University examination of the Mysore University with Physics, Chemistry and Biology as optional subjects. They applied for admission in the current year to the Pre-Professional course in Medicine leading to M.B.B.S. degree.

3. Selections to the medical colleges under the management of the State were made by a Committee appointed by the Government oh the basis of Government Order No. PLM/80/MMC/64, Bangalore dated 29th June 1964, which is marked as Exhibit "B" in these cases to be hereinafter referred to as the impugned Order. The said Committee interviewed the candidates and made selections on the basis of the aggregate marks received by them. The basis of the selection in the case of the petitioners before us, was the marks obtained by them in the Chemistry, Physics and Biology in their Pre University Course Examination plus the marks obtained by them at the interview. As per the impugned Order, 25 percent of the maximum marks for the examination in the optional subjects taken into account for making the selection of candidates was fixed as interview marks. The interview marks were equally divided under five different heads, viz.,

1. General Knowledge
2. Aptitude and personality

3. Previous academic career including special distinctions, etc.,
4. N. C. C. and A. C. C. etc.,
5. Extra curricular career including sports social service, debating, dramatics, etc.

None of the petitioners belong to any of the socially and educationally backward classes as determined by the impugned Order. Hence, their cases had to be considered in the general pool. We were told that only candidates who secured 218 marks or more in the aggregate have been selected for admission in the general pool. The petitioners having secured less than 218 marks have not been selected. The fact that the petitioners have secured less than 218 marks was not disputed. Nor was it said that any student in the general pool securing less than 218 marks had been selected. But, the selection was assailed on various other grounds.

4. In these Writ Petitions, the right of the Government to reserve seats in the medical colleges, for socially and educationally backward classes of citizens was challenged. It was submitted therein that the selection should have been made solely on the basis of the marks obtained in the University examination. This contention was not pressed at the hearing evidently because of the decision of this Court in *D.G. Viswanatha v. Chief Secy, to the Government of Mysore*[1], affirmed by the Supreme Court in *R. Chitralekha v. the State of Mysore*[2],

5. The contentions pressed at the time of the hearing of these petitions were :

(i) Under Article 15(4) of the Constitution, the reservation could be made only for Socially and Educationally Backward Classes of citizens but under the impugned Order reservation is made for Socially and Economically Backward Classes of citizens; hence the reservation in question is not in accordance with the provisions of the Constitution.
(ii) The reservations made under that Order exceed 50 percent of the total seats available for distribution and hence the said reservation contravenes the rule laid down by the Supreme Court in *M.R. Balaji v. State of Mysore*[3],
(iii) The State had no competence to make the various reservations, it had made under that order.
(iv) The interview test adopted is a highly unscientific and irrational test. Hence the selection made is vitiated.
(v) The State Government had no competence to prescribe any interview test in view of Entry No. 66 of List I of the seventh Schedule to the Constitution.
(vi) The interview test has been abused in individual case.
(vii) Several candidates were selected on collateral considerations. Hence the selection as whole is liable to be struck down.
(viii) The Selection Committee adopted two different standards in the matter of selection, one for Karnataka University students and another for Mysore University students; hence the selection made is violative of the equality clause in our Constitution.

[1] AIR 1964 Mys 132
[2] 1964 SCC Mys LJ 11 : AIR 1964 SC 1823
[3] AIR 1963 SC 649

6. On behalf of the State, the second respondent, the Director of Public Health in Mysore and the Chairman of the Selection Committee has filed a counter-affidavit. He has repudiated the various

allegations made on behalf of the petitioners. He stated that the reservation for Socially and Educationally Backward Classes of citizens was made on the basis of the Government O. No. ED. 75 TGL. 63 dated 26-7-1963. But, while drafting the Order, due to a clerical mistake instead of mentioning "Socially and Educationally Backward Classes" the words "Socially and Economically Backward Classes" were mentioned.

7. Dealing with the quantum of reservation, it was pleaded that the seats reserved for Scheduled Classes, Scheduled Tribes and the Backward Classes candidates are less than 50 per cent of the total seats available for distribution and hence the rule laid down in Balaj's case, AIR 1963 SC 649, was in no manner disobeyed. Further, it was said that in fact more than 50 percent of the available seats had been given to candidates in the general pool. The various reservations made were justified. The allegation that the interview test was unscientific and irrational was denied. The accusation that in individual cases the members of the Selection Committee abused their power was denied. The plea of mala fide was also denied. The division of seats between the Mysore University students and the Karnataka University students was justified on the ground that in the absence of a common examination it was not possible to find out the comparative merits of the students of the two universities. It was denied that Entry 66 of the First List of the seventh Schedule to the Constitution has any relevance in these cases. We shall now proceed to consider the several contentions urged.

8. Any reservation to be made under Article 15(4) of the Constitution, should be undoubtedly for the benefit of Socially and Educationally Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes. During the last several years, the State had reserved certain seats in Technical and Professional Colleges for candidates coming from Socially and Educationally Backward Classes. Last year by Order No. ED 75 TGL 63 dated 26th July 1963, reservation of seats in Technical and Professional Institutions was made in favour of the candidates coming from Socially and Educationally Backward Classes. The validity of that Order was challenged in this Court as well as in the Supreme Court. This Court upheld the reservation made under that Order in D.G. Viswanath's case, AIR 1964 Mysore 132. The decision of this Court was affirmed by the Supreme Court in R. Chitralekha's case, 1964 SCC Mys LJ 11 : AIR 1964 SC 1823. By means of Order No. PLM/80/MMC/64, dated 29th June 1964, the State merely purported to adopt the reservation made under G.O. No. ED 75 TGL 63 dated 26-7-63. On that aspect, the impugned Order reads :

> "30 percent of the number of seats after deducting number of seats reserved under sub-Rule II of Rule 3 above from the overall total "shall be reserved for the candidates belonging to socially and economically backward classes as laid down in Government Order No. ED 75 TGL 63 dated 26-7-1963."

The only change made is that in the impugned Order we find the words "Socially and Economically" in the place of the words "Socially and Educationally" found in the 1963 Order. The case for the State is that the word Economically" is a clerical mistake for the word "Educationally". That mistake, if it is a mistake has repeated itself in several places in that Order. It is further true that both in the application form as well as in the certificate prescribed, that very word is mentioned. The repetitions in question have not much significance. If once a mistake is made in an order there is nothing strange if that mistake is carried forward in the ancillary

documents. Therefore, the main question to decide is whether the mistake pleaded can be accepted. It was contended by Sri S.K. Venkataranga Iyengar the learned counsel for the petitioners that the impugned Order is a constitutional document; the Court cannot ignore any word therein much less substitute therein one word for another. According to him, in interpreting that Order we must adopt the same rules of construction, as we would have adopted in interpreting any statute. This contention, we think, is a overstatement of the legal position. The impugned Order is purely an executive order, no doubt issued by the Government in exercise of the power conferred on it by Article 15(4). But, that does not make it a constitutional document. Mistakes can creep into legislative enactments as well as into executive orders. In appropriate cases, Courts have not hesitated to go behind the words of a statute to find out the true intention of the Legislature. But, because of the formality attached to a statute, the care with which it is expected to be drafted, its scrutiny at various stages, the Courts naturally attach great deal of importance to the language of a statute. That is why the Courts hesitate to go behind the words of a statute. But this again is not an invariable rule. Time and again the Courts have read words into a statute, filled up omissions and on rare occasions have held that a word found in a statute is a mistake for another. But, when we come to executive orders the position is not similar. Unlike in the case of Legislature, the authority which issued the Order is in a position to inform the Court the intention with which the Order in question was made. The explanation given by executive is not conclusive. It is just one circumstance which may be taken into consideration in interpreting the Order.

9. There are numerous circumstances in this case which go to satisfy the Court that propose of the Government was to reserve seats for candidates belonging to Socially and Educationally Backward Classes of citizens. For several year past, the Government was reserving seats for Socially and Educationally Backward Classes. It is difficult to believe that it suddenly changed its objective and wanted to reserve seats for a different class. Further, if the Government had changed its objective it would not have said in the impugned Order that reservation was being made "as laid down in Government Order No. ED 75 TGL. 63 dated 26-7-1963". The internal evidence available from the impugned Order itself shows that the Government did not intend to make any change in its policy of reservation for backward classes. The very tests prescribed in 1963 Order were repeated in the impugned Order. Taking into consideration the explanation offered on behalf of the respondents, the history of the reservation in question, and the internal evidence available from the Order we have no hesitation in concluding that the reservation in question was made for socially and educationally backward classes and the word "economically" found in it is a mistake for the word "educationally".

10. The mistake that has crept into the Order could cause no prejudice to the petitioners nor was it said that it had caused any prejudice. The income and the occupation tests laid down therein are the very tests laid down in the last year's order test which had been held to be relevant for finding out social and educational backwardness.

11. The second ground of attack made against the impugned Order is that under it more than 50 percent of the available seats were reserved and therefore, the reservation in question contravenes the rule laid down by the Supreme Court in M.R. Balaji's case, AIR 1963 SC 649. The total number of seats available in the four medical colleges under the management of the Government of the State are 750. Out of these 3 seats were reserved for Cultural scholars etc., of Indian origin domiciled abroad; 2 seats for Colombo plan scholars; 4 seats for students of Indian origin

migrating from Burma; 4 seats for students from Asian and African countries; 2 seats for L. A. M. S. and L. U. M. S.; 5 seats for students coming from Goa; 2Vz per cent of the seats for children or wards of Defence Personnel; 1 per cent of the seats for candidates, if any, who have shown, exceptional skill and aptitude in sports and games and 75 seats as central quota for students from other States. The order provides that incase, any of the above seats are not filled up, the unfilled seats should be transferred to the general pool. Out of the remaining seats 18 per cent were reserved for candidates belonging to the Scheduled Castes and Scheduled Tribes and 30 per cent for "Socially and Educationally Backward Classes" students. Reservations for socially and educationally backward classes were made in exercise of the powers conferred on the State under Article 15(4). The other reservations were evidently made by the State in exercise of its executive power. The validity of the reservation for socially and educationally backward classes has to be judged by the conditions laid down in Article 15(4). The validity of the other reservations has to be tested on the basis of the requirements of Article 14. The ambit of the executive power of the State is very wide. Its power to make reservation of seats for certain classes of citizens is also wide. Hence those reservations have to be judged on their merits. They cannot be mixed up with the reservation made under Article 15(4). In M.R. Balaji's Case, AIR 1963 SC 649 the Supreme Court was dealing with the extent of the reservation that could be made under Article 15(4). It had no occasion to consider any other reservation. While considering the question as to what would be reasonable reservation under Article 15(4) the Supreme Court observed (in paragraphs 30 to 34 of the judgment) :

> "That takes us to the question about the extent of the special provision which it would be competent to the State to make under Article 15(4), Article 15(4) authorises the State to make any special provision for the advancement of the Backward Classes of citizens or for the Scheduled castes and Scheduled Tribes. The learned Advocate General contends that this Article must be read in the light of Article 46, and he argues that Article 15(4) has deliberately and wisely placed no limitation on the State in respect of the extent of special provision that it should make. Article 46 which contains a directive principle, provides that the State shall promote with special care the educational and economic interests of the weaker Sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. There can be no doubt that the object of making a special provision for the advancement of the castes or communities, there specified, is to carry out the directive principle enshrined in Article 46. It is obvious that unless the educational and economic interests of the weaker Sections of people are promoted quickly and liberally, the ideal of establishing social and economic equality will not be attained and so, there can be no doubt that Article 15(4) authorises the State to take adequate steps to achieve the object which it has in view. 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. The learned Advocate-General, however, suggests, that the absence of any limitation on the fate's power to make an adequate special provision indicates that if the problem of backward classes of citizens and Scheduled Castes and Tribes in any given state is of such a magnitude that it requires

the reservation of all seats in higher educational institutions, it would be open to the State to take that course. His argument is that the only test which can be applied is whether or not having regard to the problem which the State is called upon to meet, the provision made is reasonably adequate or not. Thus presented, the argument is, no doubt, prima facie attractive, and so, it must be carefully examined.

If admission to professional and technical colleges is unduly liberalized, it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker Sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker Sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case."

12. From these observations, it is clear that the upper limit laid down in that decision has only application to the reservations to be made under Article 15(4). It does not include any reservation otherwise made. Therefore, it cannot be said that the reservation made under the impugned order is contrary to the rule laid down in M.R. Balaji's case, AIR 1963 SC 649.

13. We were informed by the learned Government Pleader that several of the seats reserved under sub-rule I of the Order were not filled up and consequently they were transferred to the general pool and as a matter of fact more than 50 per cent of the total seats have been given to the candidates in the general pool.

14. Reservations made for students coming from other States, Cultural Scholars of Indian Origin domiciled abroad, Colombo Plan Scholars, students of Indian Origin migrating from Burma, Students from Asian and African Countries and! Union Territory students were attacked on the ground that the State while being generous to outsiders is indifferent towards the interests of the students of the State. We see nothing unconstitutional or illegal in those reservations. Whether those reservations were politically wise or not is not a matter for us, though if it had been necessary for us to pronounce on the advisability of making such reservations we have no doubt that the steps taken are in the right direction, if we are to build up an integrated society in this Country and discharge our moral obligations to those who are in need of our assistance. We were told that most of these arrangements are reciprocal in nature. They are made with a view to exchange students and to the extent possible to break the barrier of caste, religion and region. Classification based on lawful State policy is not violative of Article 14. Reservation made in favour of Goa students was attacked on the ground that it was a political gift made with a view to woo the Goans to join this State. The said allegation was denied on behalf of the State. Assuming

that the reservation in question was made as a part of a design to win over the Goans, we fail to see how such a reservation can be legally challenged. The Government representing the people of this State can and ought, to safeguard, what they consider to be the interest of the State. They ought to know, what is best for the State. The interest of the State is in their keeping for the time being. If any one questions their wisdom, in these matters, they ought to do so in a different forum.

15. Reservations made in favour of children or wards of the men in armed services, and ex-servicemen including those who were in the armed services during the second world war were challenged as being discriminative in character. The classification made is a valid one. The said reservation is clearly in national, interest. The criticism about that reservation shows how shortsighted one could be when blinded by selfishness. The petitioners were not well advised in taking up such extreme positions.

16. Reservation made in favour of candidates who have shown exceptional skill and aptitude in sports and games was also assailed. The learned Government Pleader informed us that only 4 seats were given for exceptionally good sportsmen. Out of them one has secured in the aggregate 251 marks, the second 211 marks, the third 194 marks and the last 193 marks. The candidate who had secured 251 marks was even otherwise entitled to a seat. Our country, though big in size, its inhabitants very large in number, is yet to make its marks in international games and sports. It is the duty of the Government to encourage by all appropriate means, sportsmanship of high order. It is well known that a good sportsman cannot afford to be a book-worm. For that reasons his claim to become a good Doctor or a good Engineer cannot be ignored. He is likely to be a better Doctor or Engineer than his competitor who knows only books but not men and matters.

17. Sri Iyengar reserved his strongest attack for the interview test. Under the impugned Order, 25 per cent of maximum marks for the examination in the optional subjects taken into account for making the selection of candidates were fixed as interview marks. The Selection Committee was authorized to award these marks at the interview of the candidates on the basis of the following tests :

1. General knowledge.
2. Aptitude and personality.
3. Previous academic career including special distinctions, etc.
4. N. C. C. and A. C. C. etc.
5. Extra curricular activities including sports, social service, debating, dramatics, etc. It was strenuously urged by Sri Iyengar that the interview test was a wholly unscientific, irrational and arbitrary test and therefore, it was repugnant to the doctrine of equality embodied in Article 34 of the Constitution. He urged that the time allotted for interviewing each candidate was wholly inadequate taking into consideration the number of marks reserved for interview and the importance of subjects on which the candidates had been interviewed. He further urged that the members of the Selection Committee were unequal to the task of interviewing the candidates; they had not the necessary training for the job entrusted to them; randum questions having no relationship to the topic on which the candidates had to be interviewed were asked; no record of the

interviews was kept, and hence there was room for error as well as manipulation.

18. These very contentions had been unsuccessfully urged by Sri Iyengar before this Court in D.G. Viswanath's case, AIR 1964 Mysore 132 and before the Supreme Court in R. Chitralekha's case, 1964 SCC Mys LJ 11 : AIR 1964 SC 1823. Dealing with those contentions this is what Subba Rao, J. who spoke for the Court observed in Chitralekha's case, 1964 SCC Mys LJ 11 : AIR 1964 SC 1823 :

> "But learned Counsel for the appellants raised a larger question that selection by interview is inherently repugnant to the doctrine of equality embodied in Article 14 of the Constitution, for, whatever may be the objective tests laid down, in the final analysis the awarding of marks is left to the subjective satisfaction of the Selection Committee and, therefore, it gives ample room for discrimination and manipulation. We cannot accept such a wide contention and condemn one of the well accepted mode of selection in educational institutions. James Hart in his an introduction to Administrative Law observes, at p. 180 thus : 'A test or examination, to be competitive, must employ an objective standard of measure. Where the standard of 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.'

In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to Colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allocating marks at interviews there can equally be manipulation in the matter of awarding marks in the written examinations. In the ultimate analysis, whatever method is adopted its success depends on the moral standards of the members constituting the selection committee and then-sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme of selection, however perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter. In this case the criteria laid down by the Government are certainly relevant in the matter of awarding marks at the interview. Learned counsel contends that the ability of a student on the basis of the said criteria can be better judged by other methods like certificate from the N. C. C. Commander or a medical board or a psychiatrist and should not be left to a body like the selection committee which cannot possibly arrive at the correct conclusion in a short time that would be available to it. This criticism does not affect the validity of the criteria, but only suggests a different method of applying the criteria than that adopted by the Committee. It is not for us to say which method should be adopted; that must be left to the authority concerned. If in any particular case the selection committee abuses its power in violation of Article 14 of the Constitution, that may be a case for setting aside the results of a particular interview, as the High Court did in this case. We cannot, therefore, hold without better and more scientific material placed before us that selection by interview in

addition to the marks obtained in the written examination is itself bad as offending Article 14 of the Constitution."

19. In these petitions, no new or additional ground, not urged in Viswanath's case, AIR 1964 Mysore 132 or Chitralekha's case, 1964 SCC 1 Mys LJ 11 : AIR 1964 SC 1823 was urged. But, it was said that better material in shape of standard works are now available to show how an interview should be conducted; judged by the standards laid down in those books the method of interview adopted by the Selection Committee was highly rudimentary. In this connection extracts from the book "Dynamics of Interviewing" was read out to us to show that the science of interview has very much advanced in the Western Countries. Our attention was also invited to a passage in the book "Evaluation in Modern Education" by Wrightstone, Justman, Robins, wherein it is observed :

> "Interview may be conducted in a variety of ways. Each type of interview to be more useful depends on the contents of the interview and on the maturity of the understanding of the interviewee. The inter-relationship between the interviewer and the interviewee while a great advantage, may also be disadvantage. There are always chances that time will be wasted, unnecessary questions raised, irrelevant materials covered or that a constructive person to person relationship cannot be sustained because of the personality of either the interviewer or the interviewee."

There is hardly any doubt that the interview methods adopted in this country fall far short of those prescribed in those books. In this, as in many other matters, we have to go a very long way. It is good to learn and strive to achieve the ideal. But it is unwise to be blind to the realities of the situation. Our shortcomings cannot be overcome by mere criticism. Under the existing circumstances, particularly bearing in mind the enormity of the task entrusted to the Selection Committee we think, the interviews held were satisfactory. As observed by Lehman, J. in ***Sloat v. Board of Examiners*** (reported in 'Introduction to Administrative Law" by Hart at pages 182 to 185) :

> "The law does not require the impossible or forbid the reasonable..... Exact definition of the qualities which are essential or desirable may be impossible; exact formula or standard by which such qualities may be measured has never been achieved; mechanical application of any standard is certainly not practicable. Much must be left here to the judgment of the examiners. The test cannot be wholly objective and to the extent that it is subjective the result may depend as much upon the fitness of the examiners as upon the fitness of the candidate. That is a risk inherent in all systems of examinations."

20. It was next urged that the interview test prescribed in the impugned Order corrodes the power given to the Union under Entry 66 of List I of the Seventh Schedule to the Constitution. In support for this contention, Sri Iyengar, relied on the decision of the Supreme Court in *Gujarat University v. Shri Krishna Ranganath*[4], This contention of Sri Iyengar is no more res integra. He had advanced this very contention without success in R. Chitralekha's case, 1964 SCC Mys LJ 11 : AIR 1964 SC 1823. Dealing with that contention, this is what the court observed :

> "It is then contended that the Government has no power to appoint a selection committee

for admitting students to colleges on the basis of higher or different qualifications than those prescribed by the University and therefore, the-orders made by the Government in respect of admissions were illegal. The first argument is that co-ordination and determination of standards of a University is a Union subject and, therefore, the State Legislature has no constitutional competency to make a law for maintaining the standards of university education. As the State Government's executive power extends to matters with respect to which the Legislature of the State has power to make laws, the argument proceeds, the Government of the State cannot make an order or issue directions for maintaining the standards of the University. The further argument is that prescribing higher marks for admissions to a college is for the purpose of maintaining the standards of University education and therefore the State Government is not empowered to do so. In support of this contention reliance is placed upon the judgment of this Court in AIR 1963 SC 703. There, one of the questions raised related to alleged conflicts between Entry 11 of List II and Entry 66 of List I of the Seventh Schedule to the Constitution. By Item No. 11 of List II of the Seventh Schedule to the Constitution, the State Legislature has power to legislate in respect of "education including Universities subject to the provisions of Items 63, 64, 65 and 66, List I and 25 of List III. By Item 66 power is entrusted to Parliament to legislate on "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

The question was whether medium of instruction was comprehended by either of those entries or whether it fell under both. In that context it was observed at pp. 715-716 :

"The State has the power to prescribe the syllabi and courses of study in the institution named in Entry 66 (but not falling within Entries 63 to 65) and as

[4] AIR 1963 SC 703

an incident thereof it has the power to indicate the medium in which instructions should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all-India or other basis impossible or even difficult." This and similar other passages indicate that if the law made by the State by virtue of Entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "co-ordination and determination of standards in institution for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot be obviously be decided on speculative and hypothetical reasoning. It the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State Legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by Entry 66 of List I of the Seventh.

> Schedule to the Constitution. If so, it is not disputed that the State Government would be within its right to prescribe qualifications for admission to colleges so long as its action does not contravene any other law."

21. The allegation that the interview test has been abused in individual case was not substantiated. The members of the Selection Committee are high placed persons. They could be expected to act fairly and justly. It was not said that they were inimically disposed towards the petitioners or any of them. The allegation of abuse of power is based on the hypothesis that the petitioners, in their own view, had done well in the interview but yet they did not secure good marks. In support of their assertion that they have done well in the interview they have told us with surprising exactness the questions put to them and the answers given by them. If what they have told us is true, their memory is really remarkable. Naturally the second respondent, the Chairman of the Selection Committee is unable to admit or deny the assertions made by the petitioners. In the very nature of things it is impossible for any one to remember the questions put and answers given by about three thousand interviewees. We were told that as the petitioners' assertions as regards the questions put and answers given have not been denied by the, respondents, we ought, on the basis of the rules of pleadings, accept the version given by the petitioners and in that event, in view of the comparatively low marks secured by them at the interview a clear case of abuse of power is made out. This contention has more subtlety than substance in it. Rules of pleadings, as we understand them, are not opposed to commonsense. The petitioners' assertions have to be naturally viewed as sell-serving statements. In the very nature of things, they can be neither verified nor controverted. A charge of abuse of power is a grave charge. Before accepting a charge of that character, the Court naturally insists on satisfactory proof. No such proof is forthcoming. Hence, the accusation must fail.

22. The contention that the selections were made on collateral grounds seems to have been made without due sense of responsibility. In the affidavits filed by the petitioners, this is what is stated in that regard :

> "The interview marks have not been made available to the candidates even though demands were made therefor. The Selection Committee finished the interview by the 24th August and finished completion of their task by 30-8-1964. The results were expected to be announced by 1-9-1964.

They were however not published waiting for the return of the Health Minister from Srinagar. The Committee members were however in Bangalore and one of the Committee Members stated that no student had got less than 25 or more than 44 at the interview. Another member of the Committee had stated that students who got 60 percent and above were sure to be admitted from the forward group. He left on the 6th night to Gulbarga by the Guntakal train. The Health Minister returned on the 5th September 1964 afternoon. The first set of seats were actually announced on the 7th night between 7-45 and 11-45 p.m. The students noted in the annexure Exhibit "F" who got lesser marks than the petitioner, have been selected for admission because they happened to be the relations of high officials or non-officials (ex-ministers) or in whom they were interested. The circumstance that the lists were not published until the public Health Minister returned to Bangalore and the lists were published late in the night in a hush-hush manner, and that the marks are not made available even after demands had been made, and the

other circumstance that immediately after the first list had been published within 12 hours another 12 students were admitted to the Hubli Medical College (apparently on a furore created by the M.L.As.) and the significant circumstance that other lists were published without stating that certain students were in the waiting lists, all point to the conclusion that the selection is vitiated by collateral considerations."

23. These accusations are extremely vague and lacking in detail. In reply, this is what is stated by the second respondent :

> "It is not true that the Selection Committee postponed finalization of the lists with a view to await the return of the Health Minister from Srinagar. The statement that the Committee finished completion of their task by 30-8-1964 is totally false. The finalization of the lists was completed by the 7th September 1964. The statement herein that one of the Members made statement, as stated herein, is too vague to be traversed. In this connection, it is pertinent to notice that the petitioner has not disclosed the name of the member concerned. In any event submit that these allegations are irrelevant besides being vague."

24. Dealing with the allegations, in paragraph 26 of the affidavit, the second respondent stated that out of the 28 candidates listed in annexure Exhibit E 2 have secured more marks in the examination than the petitioner; several of them belong to the Socially and Educationally Backward Classes; one of them belongs to the Scheduled Caste. It was denied that any of them was selected because of any extraneous influence. As regards the publication of a supplemental list on the next day, it was stated that it became necessary as the allocation of those students to different Colleges had to be re-examined. It was denied that any furore was created by the M.L.As. or that any M.L.A. had anything to do with that publication. We see no reason to disbelieve the statement of the second respondent.

25. Not a single selection was proved to have been made on extraneous considerations. The allegation of mala fides, in our opinion, was made without any justifiable ground.

26. The last contention urged was that two different standards were adopted in the matter of selection - one standard for the Karnataka University students and the other for the Mysore University students. It was said that the Mysore University students were discriminated against inasmuch as no student of that University who secured less than 218 marks was admitted whereas students of the Karnataka University who secured 208 marks or more were selected. This contention has also no merit in it. By means of a Corrigendum issued by the Government on 17-8-1964, the Government directed :

> "I. Seats in Karnataka Medical College, Hubli, will be filled up only from among those students who have passed the qualifying examinations of the Karnataka University subject, however, to seats upto 10 per cent of the total number of seats in that College being filled up by students having equivalent qualification from other Universities at the discretion of the Selection Committee.

II. Seats in the Bangalore Medical College, Mysore Medical College and Bellary Medical College will be filled up only from among those students who have passed the qualifying examinations of the Mysore University subject, however, to seats upto 10 per cent of the total number of seats in the said three Colleges being filled up by students from other Universities having equivalent qualification at the discretion of the Selection Committee." The syllabi of the two Universities are different. They do not have common examination. The comparative merits of the students of the two universities cannot be tested by referring to the marks obtained by them in the examination. Hence, the Government thought the best way is to distribute seats between the two universities in the manner it has done, probably taking into consideration the areas served by the two Universities, the number of students who have passed the prescribed examinations and all other relevant circumstances. We see no reason to interfere with the same.

27. No other contention was urged at the hearing.

28. Every one of the contentions urged on behalf of the petitioners has failed. Therefore, these petitions are dismissed. No costs.

Petitions dismissed.