KERALA HIGH COURT

T. Shameem

Vs

Trivandrum

O.P. Nos. 4873, 5006, 5004, 5188 and 5449 of 1974

(K.K. Narendran, J.)

24.02.1975

ORDER

K.K. Narendran, J.

1. The petitioners in these Original Petitions applied for admission to the First M.B. B. S. Course for the year 1974-75. But they did not get admission. The petitioners who belong to communities which are socially and educationally backward, question the constitutionality of the restriction imposed in G. O. P. 208/66/Edn. dated 2-5-1966 (Ext. P-1 in O. P. No. 4873 of 1974) which insists that only applicants who are members of families whose aggregate annual income is below Rs. 6,000/- will be entitled to admission to the seats reserved for students belonging to the backward classes. The petitioners have got an alternate contention that in any case, the income ceiling of Rs. 6,000/- fixed in Ext. P-1 G. O. is highly arbitrary and hence not valid and sustainable.

2. The petitioner in O. P. No. 4873 of 1974 belongs to the Muslim community. She secured 349 marks and is entitled to 5 marks more on the basis of her sport certificate. Though she secured more marks than the minimum fixed this year for candidates of the Muslim community, she was not selected for admission to the First M. B. B. S. Course. Her father is a small businessman. She did not produce an income certificate of the Tahsildar because her father was having income which is a little more than Rupees 6,000/-, the ceiling fixed in Ext. P-1 G. O. Along with the petitioner's application Exts. P-3 and P-4 income-tax assessment orders issued to the petitioner's father for the years 1972-73 and 1973-74 respectively were submitted. As per Ext. P-3 the net income is Rs. 3,710/- and as per Ext. P-4 the net income is Rs. 7,020/-. As the petitioner's name was not included in the list of selected candidates, she on 5-11-1974 submitted Ext. P-5 application before the 2nd respondent-State. No orders are so far issued on Ext. P-5 and the enquiries made by the petitioner's father revealed that there is no prospect of Ext. P-5 application being allowed in view of Ext. P-1 and the other orders in the matter. It is under the above circumstances that the petitioner has approached this Court with this Original Petition for a writ of *certiorari* to quash the ceiling of income limit in Ext. P-1 and other subsequent orders in the matter and for a writ of mandamus or any other appropriate writ, direction or order to treat the petitioner as a member of socially and educationally backward class and to consider the

petitioner for admission to the Medical College in the State and to admit the petitioner for the first M. B. B. S. course. A counter-affidavit has been filed on behalf of the 1st respondent-Principal, Medical College, Trivandrum. The statement in the above counter-affidavit is that candidates from families whose annual income is less than Rs. 6,000/- are only eligible to be considered for admission under reservation. The petitioner has not produced the income certificate and hence she was not considered under reservation. The petitioner has filed a reply affidavit. The statement in the reply affidavit is that the direction in Ext. P-1 G. O. is that applicants should produce only a community certificate and there is no mention about the production of an income certificate. It is also pointed out in the reply affidavit that nothing is mentioned therein about the contentions raised by the petitioner in the Original Petition.

3. The petitioner in O. P. No. 5006 of 1974 is also a member of the Muslim Community. He secured 352 marks and has mere than the minimum required for admission for candidates belonging to the Muslim community. Respondents 3 to 5 are candidates selected for admission and who have got only lesser marks than the petitioner. The petitioner in this Original Petition also questions the ceiling of income provided in the Government Order dated 2-5-1966 and also seeks a writ in the nature of mandamus directing that the petitioner be admitted to the First M. B. B. S. course in any one of the Medical Colleges in the State. A counter-affidavit has been filed in this case on behalf of the 2nd respondent State of Kerala. The averments and contentions raised in the counter-affidavit are similar to those raised in the counter-affidavit filed in O. P. No. 4873 of 1974. As per order on C. M. P. No. 589 of 1975 respondents 3 to 5 were removed from the party array.

4. The petitioner in O. P. No. 5004 of 1974 belongs to Vanika Vysya community. She secured 348 marks and she is also entitled to 5 marks more on the basis of her sports certificate though the minimum marks fixed this year for her community are 342. As her name did not find a place in the list of selected candidates she made Ext. P-3 representation before the 2nd respondent-State of Kerala. But the 2nd respondent did not pass any orders on Ext. P-3. As per order on C. M. P. No. 30 of 1975 the petitioner impleaded two selected candidates as additional respondents.

5. The petitioner in O. P. No. 5188 of 1974 belongs to the Thiyya community. She secured 359 marks which is more than the minimum fixed for applicants from that community this year. According to the petitioner, respondents 3 to 6 who are candidates selected for admission secured only lesser marks. The petitioner's case is that she was not selected for one of the reserved seats because her father's income in 1973-74 was more than the ceiling fixed by the Government Order dated 2-5-1966. When her name did not find a place in the list of selected candidates, she submitted a representation before the 2nd respondent State. She complains that no orders have so far been passed on her representation. A counter-affidavit has been filed on behalf of the 2nd respondent-State of Kerala. The 4th respondent, a candidate selected for the First M. B. B. S. course, also has filed a counter-affidavit controverting the contentions raised by the petitioner in the Original Petition.

6. The petitioner in O. P. No. 5449 of 1974 is a member of the Thiyya community, who secured 362 marks which is more than the minimum prescribed this year for the applicants from that community. The petitioner's grievance is that though respondents 3 to 6 who secured only lesser marks were selected, she was not selected, the reason being that her father's income is more than Rupees 6,000/-. Subsequent to the filing of this Original Petition, as per order on C. M. P. No.

1277 of 1975 dated 23-1-1975, the 3rd respondent has been removed from the party array.

7. The exhibits and respondents will be referred to in this judgment as they are in O. P. No. 4873 of 1974.

8. Shri K. Chandrasekharan, learned Counsel for the petitioner in O. P. No. 4873 of 1974 contends that the social and educational backwardness of an applicant cannot depend on the income of his parents. It is submitted that in the decisions of the Supreme Court dealing with this question the economic considerations are not mixed in the way in which it has been done in the Kumara Pillai Commission Report which forms the basis of Ext. P-1 G. O. dated 2-5-1966. Learned Counsel submits that Article 15 (4) of the Constitution was enacted to empower the State to make reservations in educational institutions for socially and educationally backward classes of citizens and for the scheduled castes and the scheduled tribes because of historic conditions. The benefits under the said provision provided for by Article 15 (4) cannot depend upon any economic barrier. Backwardness is not a thing that arises in just a day. Backwardness is also not a thing which can be vanished in just a day. The reference to the income for purposes of excluding a citizen from the socially and educationally backward-class and the fixing of the ceiling are arbitrary and discriminatory and hence violative of Article 14 of the Constitution. The historical considerations on account of which the muslim community is socially and educationally backward do exsit in the case of the petitioner and simply because the income of the petitioner's father is a little more than the ceiling fixed in Ext. P-1 G. O., the petitioner cannot be excluded from the socially and educationally backward classes referred to in Article 15 (4) of the Constitution and denied the benefits.

9. Learned Counsel relies on a decision of the Supreme Court in *Subash Chandra v. State of Uttar Pradesh*[1], and contends that poverty is not the determining factor of social backwardness. In the above decision the Supreme Court said:

> "The expression 'classes of citizens' indicates a homogeneous section of the people who are grouped together because of certain likeness and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element or common attributes to make them a class of citizens. "
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> In the above case, one of the questions which came up for consideration was whether the orders of the State of Uttar Pradesh reserving seats for candidates from the hill and Uthrakand areas of the State in the Medical Colleges in the State are constitutionally valid. The Supreme Court held that the reservations for the hill and Uthrakand areas are valid while the reservations in favor of

[1](Civil Appeal No. 1385 of 1973) : (reported in AIR 1975 SC 563)

> candidates from the rural areas is unconstitutional. Relying on this decision the learned Counsel contends that on the basis of economic status nobody who belongs to the hill and Uthrakand areas is taken out of the socially and educationally backward classes and denied the benefit of the protection guaranteed by Article 15 (4) of the Constitution. The learned Counsel also lays emphasis on the following statement in the judgment:
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> "Extracting these observations, the Attorney General contended that poverty is not only

relevant but is one of the elements in determining the social backwardness. We are unable to accept the test of poverty as the determining factor of social backwardness."

10. The learned Counsel further contends that the ceiling of Rs. 6,000/- fixed in Ext. P-1 G. O. is highly arbitrary and it has no rational distinction. The Kumara Pillai Commission recommended a ceiling of Rs. 4,200/-. But the 2nd respondent increased this limit to Rs. 6,000/-when Ext. P-1 was issued within a year of the date of the Commission's report. This increase must have been on account of the increase in the cost of living and other relevant factors. If this be so, considering the cost of living in 1974, there is no meaning in insisting that the ceiling of Rs. 6,000/- should continue without any changes. According to the learned Counsel the ceiling must be at least Rs. 12,000/-. In support of his contentions the learned Counsel relies on the following decisions. *State of U. P. v. Dhaun*[2]*, Nagpur Improvement Trust v. Vithal Rao*[3]*, D. R. Nim v. Union of India*[4]*,* and *Jaisinghani v. Union of India*[5]*,* the Supreme Court said :

"It is now well settled that the State can make a reasonable classification for the purpose of legislation provided it is based on intelligible differentia having a rational relation with the object sought to be achieved by the legislation in question. In this connection, it must be borne in mind that the object itself should be lawful. "

In *D. R. Nim v. Union of India*[6]*,* the Supreme Court observed:

"The Central Government cannot pick out a date from a hat - and that is what
it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. "

In the above case, the Supreme Court was considering the order of the Government of India dated 25-8-1955 reckoning the service for promoted Indian Police Service Officers from 19-5-1951. The Supreme Court held that the order was invalid since the date fixed was artificial and arbitrary, the date having nothing to do with the application of Rule 3 (3) of the Indian Police Service (Regulation of Seniority) Rules, 1954. In *Jayasinghani v. Union of India*[7]*,* dealing with the principles to be followed in the case of discretionary orders the Supreme Court said :

"..... the absence of arbitrary power is the first essential of the rule of law

[2]1969 (1) SCWR 482
[3]1973 (3) SCR 39 : (AIR 1973 SC 689)
[4] AIR 1967 SC 1301
[5] AIR 1967 SC 1427. In 1973 (3) SCR 39 : (AIR 1973 SC 689)
[6] AIR 1967 SC 1301
[7] AIR 1967 SC 1427

upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law".

11. Shri V. Sivaraman, Nair, learned Counsel for the petitioner in O. P. No. 5006 of 1974 supplementing the arguments of Shri K. Chandrasekharan, learned Counsel for the petitioner in O. P. No. 4873 of 1974, contended that a sub-classification on the basis of income is violative of Article 14 of the Constitution. The learned Counsel contends that it is clear from the Kumara Pillai Commission report that the Muslim community is a community which is socially and educationally backward. If this be so, excluding a member of that community from the socially and educationally backward classes referred to in Article 15 (4) of the Constitution on the basis of his economic status is something which is not contemplated by Article 15 (4). Learned Counsel relies on the decisions of the Supreme Court in *P. Rajendran v. State of Madras*[8], and *State of Andhra Pradesh v. U.S.V. Balaram,*[9] In *Rajendran v. State of Madras*[10], the Supreme Court said :

> "But it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15 (4). "

In the above case, the Supreme Court ruled that the rules promulgated by the State of Madras for selection of candidates for admission to the M. B. B. S. course providing reservation of seats for socially and educationally backward class on the basis of caste are not violative of Article 15 of the Constitution. In AIR 1972 SC 1375 the Supreme Court, after referring to all the earlier decisions on the matter said:

> "In the determination of a class to be grouped as backward a test solely based upon class or community cannot be accepted as valid. But in our opinion though directive principles contained in Article 46 cannot be enforced by Courts, Article 15 (4) will have to be given effect to in order to assist weaker sections of the citizens, as the State has been charged with such a duty. No doubt, we are aware that any provision made under this clause must be within the well-defined limits and should not be on the basis of caste alone. But it should not also be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data it is found that the caste as a whole is socially and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be

[8] AIR 1968 SC 1012 [10] AIR 1968 SC 1012

[9] AIR 1972 SC 1375

> both socially and educationally above general average. There is no gainsaying the fact that there are numerous castes in the country which are socially and educationally backward and therefore a suitable provision will have to be made by the State as charged in Article 15 (4) to safeguard their interests. "The Supreme Court further said :
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> "But one thing is clear that if an entire caste is, as a fact, found to be socially and educationally backward, their inclusion in the list of backward classes by their caste name is not violative of Article 15 (4). "

In this decision the Supreme Court has adverted to the fact that there were already two decisions of the Supreme Court where the list prepared of backward classes on the basis of caste has been accepted as valid. It is further pointed out that the Court was satisfied on the materials that the classification of caste as backward class in those cases was justified. In para. 95 of the judgment the Supreme Court said:

> "To conclude, though *prima facie* the list of Backward Classes which is under attack before us may be considered to be on the basis of caste, a closer examination will clearly show that it is only a description of the group following the particular occupations or professions, exhaustively referred to by the Commission. Even on the assumption that the list is based exclusively on caste, it is clear from the materials before the Commission and the reasons given by it in its report that the entire caste is socially and educationally backward and therefore their inclusion in the list of Backward Classes is warranted by Article 15 (4). The groups mentioned therein have been included in the list of Backward Classes as they satisfy the various tests, which have been laid down by this Court for ascertaining the social and educational backwardness of a class. "Shri Sivaraman Nair, learned Counsel then contended that the social and educational backwardness of classes cannot be determined exclusively with reference to the income. The socially and educationally advanced classes may consist of people with income lesser than Rs. 6,000/- but such persons are not treated either by the Commission or by the Government Order dated 2-5-1966 as socially and educationally backward classes. So, there is no justification for treating a person belonging to a caste which is socially and educationally backward as not entitled for the reservation provided in the said Government Order simply because his income is above the ceiling provided. According to the learned Counsel, the only criterion is whether a person belongs to a class or group which has been found to be socially and educationally backward. The subdivision of that group on the basis of income is an uncertain test which is more often likely to fail. Such a test is arbitrary and discriminatory. It is also violative of the provisions in Articles 14 and 15 of the Constitution. In support of his contentions the learned counsel relies on the following decisions :
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> *State of Jammu and Kashmir v. Triloki Nath Khosa*[11], and *R.S. Deodhar v State of Maharashtra*[12],. In *State of Jammu and Kasmir v. Triloki Nath Khosa*[13], the Supreme Court said :
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> "These are perhaps meta-judicial matters left to the other branches of

[11] AIR 1974 SC 1
[12] AIR 1974 SC 259
[13] AIR 1974 SC 1

> Government, but the Court must hold the Executive within the leading strings of egalitarian constitutionalism and correct, by judicial review, episodes of subtle and shady classification grossly violative of equal justice. That is the heart of the matter. That is the note that rings through the first three fundamental rights the people have given to themselves."In *R. S. Deodhar v. State of Maharashtra*[14] dealing with certain orders passed

by the Government of Maharashtra regarding promotion to the post of Deputy Collectors the Supreme Court said :

"The vice of inequality of opportunity continues to inhibit promotions to the cadre of Deputy Collectors. The procedure followed by the State Government in making promotions must, therefore, be held to be violative of Article 16 of the Constitution."

12. Shri S. Easwara Iyer, learned counsel for the petitioner in O. P. Nos. 5004, 5188 and 5449 of 1974, contends that there is already a group of socially and educationally backward people recognized on the basis of caste and picking up some from that group on the basis of poverty and making them a class which is socially and educationally backward is not something which is contemplated by Article 15 (4) of the Constitution. Learned counsel further contends that the economic backwardness must be scientifically tested and that is not done by the Kumara Pillai Commission. It is also contended that the poverty line is fixed arbitrarily and there is no guideline in fixing the ceiling at Rs. 6000/-. At any rate, the ceiling of Rs. 6000/- cannot but be arbitrary in 1974 when the petitioners sought admission for the first M.B.B.S. course. It is pointed out that if Rs. 6000/- was fixed as the ceiling in 1966, considering the cost of living at present it cannot but be much more than that and hence the retention of Rs. 6000/- as the ceiling limit is nothing but arbitrary.

13. The learned Government Pleader appearing in the case points out that the provision in Article 15 (4) of the Constitution is for the advancement of socially and educationally backward classes of citizens and not for castes or communities which are socially and educationally backward. Only in the case of scheduled castes and scheduled tribes the benefit conferred by Article 15 (4) will enure to the whole of that caste or tribe but in the case of other communities which are backward, only those among them who form a class on the basis of their economic status will come under the purview of Article 15 (4). The learned Government Pleader relies on the following decisions of the Supreme Court. *M. R. Balaji v. State of Mysore*[15] and *R. Chitralekha v. State of Mysore*[16], In *M. R. Balaji v. State of Mysore*[17], the Supreme Court said :

"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..... 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

[14] AIR 1974 SC 259 [16] AIR 1964 SC 1823

[15] AIR 1963 SC 649 [17] AIR 1963 SC 649

shows the relevance of both caste and poverty in determining the backwardness of citizens." The Supreme Court further said :

"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. "

In *R. Chitralekha v. State of Mysore*[18], the Supreme Court said :

> "An order of the Government making a classification of socially and educationally backward classes on the basis of economic condition only is not bad because it has not been done by taking into consideration the caste also. The authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but if it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria". The Supreme Court further said:
> "Caste is only a relevant and not a compelling circumstance in ascertaining the backwardness of a class and where it can be done the social backwardness of a group of citizens can be determined without reference to caste at all. "

In para, 19 of the above judgment it has been pointed out:

> "The important factor to be noticed in Article 15 (4) is that it does not speak of castes, but only speaks of classes. If the makers of the Constitution intended to take castes also as units of social and educational backwardness, they would have said so as they have said in the case of the Scheduled Castes and the Scheduled Tribes. Though it may be suggested that the wider expression 'classes' is used in clause (4) of Article 15 as there are communities without castes, if the intention was to equate classes with castes, nothing prevented the makers of the Constitution to use the expression 'Backward Classes or castes'. The juxtaposition of the expression 'Backward Classes' and 'Scheduled Castes' in Article 15 (4) also leads to a reasonable inference that the expression 'classes' is not synonymous with castes. It may be that for ascertaining whether a particular citizen or a group of citizens belongs to a backward class or not, his or their caste may have some relevance, but it cannot be either the sole or the dominant criterion for ascertaining the class to which he, or they belong. "

The learned Government Pleader argues that the ceiling of Rs. 6,000/- was fixed as early as 1966 and there is no reason why the State Government will not review the same in the immediate future. He has also pointed out the impracticability of varying the ceiling from year to year. According to the Government Pleader, it can only be done periodically and it is not now 10 years since the present ceiling was fixed by the Government Order dated 2-5-1966.

14. Ext. P-1 Government Order has been issued on the basis of the recommendations

[18] AIR 1964 SC 1823

of the Kumara Piliai Commission. Counsel on both sides made pointed reference to the discussions contained in this report. This report printed and issued by the State Government in a book form was available for perusal. I have gone through this report. The Kumara Pillai Commission was appointed by the State Government in pursuance of a suggestion made by a

Division Bench of this Court in *State of Kerala v. Jacob Mathew*[19], The Division Bench was allowing a writ appeal by the State against a single Bench decision in *Jacob Mathew v. State of Kerala*[20],) quashing Government Order R Dis. 10528/57/ EdD dated 15-6-1957, as modified by subsequent orders reserving seats for candidates belonging to backward classes in professional colleges. In the above Government Order reservation was made to the backward classes based on castes and communities. It is pertinent to note that as early as 1964 this Court held that it is permissible to take caste also into consideration in ascertaining the backwardness of a group of persons, that if the whole or the substantial portion of a caste is socially and educationally backward, then the name of that caste can be symbol or synonym for a class of citizens who are socially and educationally backward and thus within the ambit of Article 15 (4) of the Constitution. The terms of reference to the Kumara Pillai Commission as set out in G. O. MS. 243/ 64/Pd dated 8-7-1964 constituting the Commission was as follows:

> "2. The Commission shall enquire into the social and educational conditions of the people and report on what sections of people in the State of Kerala (other than Scheduled Castes and Scheduled Tribes) should be treated as socially and educationally backward and therefore deserving of special treatment by way of reservation of seats in educational institutions. They shall also recommend what the quantum of such reservation should be and the period during which it may remain in force."

The Commission has discussed on pages 10 to 14 of the report the object of Article 15 (4) of the Constitution in the light of the decisions of the Supreme Court in *State of Madras v. Champakam Dorairajan*[21], *Balaji v. State of Mysore*[22], and *Chitralekha v. State of Mysore*[23], As a matter of fact, these were the only pronouncements of the Supreme Court available at that time. In AIR 1963 SC 649, Gajendragadkar, J. (as he then was) speaking for the Court said:

> "Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The class of citizens who are deplorably poor automatically become socially backward".

In *Chitralekha v. State of Mysore*[24], Subba Rao, J. (as he then was) speaking for the majority said:

> "It may be that for ascertaining whether a particular citizen or a group of citizens belongs to a backward class or not his or their caste may have some relevance, but it cannot be either the sole or the dominant criterion for ascertaining the class to which he or they belong."

[19] AIR 1964 Ker 316 [21] AIR 1951 SC 226 [23] AIR 1964 SC 1823
[20] 1963 Ker LT 783 : (AIR 1964 Ker 3) [22] AIR 1963 SC 649 [24] AIR 1964 SC 1823

The Commission as a matter of fact laid down the general principles for ascertaining the social and educational backwardness in the light of the general principles laid down by the Supreme Court in the above decisions and this has been made clear in para. 9 on page 23 of the report. The Commission has really accepted the test of poverty as the determining factor of social backwardness. It is here exactly where the shoe pinches. On page 36, para. 14 of the report the Commission came to the following conclusion :

> "Members of families in the State which have an aggregate income of Rs 4,200/- and above per annum from all sources put together, cannot be considered to belong to any socially backward class whatever may be the caste or community to which they belong. "

Thus the Commission came to the conclusion that only citizens who are members of families falling within the above income group and who belong to the castes and communities mentioned in Appendix VIII constitute socially and educationally backward classes for purposes of Article 15 (4) of the Constitution.

15. I think it is useful to refer to certain data given in Chapter IV of the Commission report which deal with socially and educationally backward classes. It can be seen from figures given in para. 22 of the report which deals with Muslims that roughly only 4% of the Muslims in the State are having income more than that of the lower income group. On page 51 it is also stated as follows:

> "A considerable portion of the community are fishermen, agricultural labourers, peddlers and daily wage earners. As Islam does not recognise caste distinctions all these people were freely intermingling with what may be deemed to be the upper class Muslims and contributed to the social and educational backwardness of the community."

It can be seen from para. 21 of the report that roughly only 5 per cent of the Ezhavas in the State are having income above the lower income group fixed by the Commission. In the case of other backward communities included in Appendix VIII also the position is not very much different. Simply because there is a microscopic minority in a backward caste or community whose income is above that of the lower income ceiling fixed by the Commission there is no reason why that caste or community as such should not be considered as a backward class for the purposes of Article 15 (4) of the Constitution. The acceptance by the Commission of the test of poverty as the determining factor for social backwardness is and is the only reason why the above microscopic minority in a backward caste or community is taken out of the socially and educationally backward class contemplated by Article 15 (4) of the Constitution.

16. The State Government in Ext. P-1 has simply followed the recommendations of the Commission, perhaps the only departure made is to increase the ceiling from Rs. 4,200/- to Rs-. 6,000/-. The list of socially and educationally backward classes in Appendix VIII to the Commission report has been included in the Annexure to Ext. P-1 G. O. So, the mistake committed by the Kumara Pillai Commission in formulating the general principles for the test of social and educational backwardness on the basis of the decisions of the Supreme Court in AIR 1963 SC 649 and AIR 1964 SC 1823 continues to be there in the decision the State Government have taken by Ext. P-1 G. O. dated 2-5-1966. So, the question is whether the restriction imposed by income ceiling specified in Ext. P-1 and excluding certain members of the backward communities from the benefit of the special provision for the advancement of socially and educationally backward classes is constitutional in the light of the decisions of the Supreme Court in AIR 1968 SC 1012, *Trilokinath v. State of Jammu and Kashmir*[25],
17. Article 15 (4) of the Constitution reads :

"15. (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. "

A caste or community can very well be a class of citizens. Even where a microscopic minority in a caste or community is socially and educationally above the general average, if the caste or community as a whole is socially and educationally backward, there is no reason why that caste or community as such cannot be considered as a socially and educationally backward class for the purposes of the special provision under Article 15 (4) of the Constitution for the advancement of the socially and educationally backward classes. The only thing is that the provision should not be on the basis of caste alone. As long as there is in this country a number of castes which are socially and educationally backward, there is nothing wrong in the State making suitable provisions under Article 15 (4) of the Constitution for their advancement. The test of poverty cannot be the determining factor of social backwardness. According to the Kumara Pillai Commission report and Ext. P-1 G. O., nobody who is not a member of the castes and communities listed in Appendix VIII to the Commission report (Annexure in Ext. P-1 G. O.) will come under the socially and educationally backward classes. The listed communities and castes are those who are treated as backward classes for the purposes of reservation in public services under Article 16 (4) of the Constitution. What has been done in Ext. P-1 is to take a few members of those communities out on the basis of their income and to treat, the rest as socially and educationally backward classes. The basis of this differential treatment is poverty and poverty alone. This cannot be the determining factor for determining the social and educational backwardness under Article 15 (4) of the Constitution. In the States of Andhra Pradesh and Madras (now Tamilnadu) classification on the basis of social and educational backwardness was made taking castes as units. no doubt, castes which found a place among the backward classes must be communities which are socially and educationally backward. There cannot be a substantial difference in the social and educational backwardness of these castes as a whole and the castes and communities of this State listed in the Annexure to Ext. P-1 G. O. The Supreme Court upheld the reservations made in the States of Andhra Pradesh and Madras on the basis of the classification made there. In this context also the poverty test applied in Ext. P-1 G. O. cannot be sustained. The restriction imposed in Ext. P-1 G. O. that only applicants who are members of families which have an aggregate income of less than

[25](1969) 1 SCR 103 : (AIR 1969 SC 1), (Civil Appeal No. 1385 of 1973) : (reported in AIR 1975 SC 563) and (AIR 1972 SC 1375)

Rs. 6,000/- belonging to the communities listed in the Annexure to Exhibit P-1 G. O.
are entitled for admission for the seats reserved for socially and educationally backward classes is unconstitutional and hence not valid. All applicants who belong to the communities listed in the Annexure to Ext. P-1 G. O. are entitled for admission to the seats reserved in the Medical Colleges if they have secured marks not less than minimum fixed for that community and if they are otherwise eligible for admission.

18. The counsel for the petitioners have another contention that the ceiling of Rs. 6,000/- fixed in Ext. P-1 G. O. is at any rate arbitrary, unreasonable and is an irrational classification. Even if the ceiling of Rs. 6,000/- fixed in 1966 was reasonable in the circumstances that prevailed then there is no reason why it should be retained in 1974 when the cost of living has gone up so much. There seems to be considerable force in this contention because the income limit of Rs. 6,000/- in 1974 cannot be considered to be just and proper. In a case where both the father and mother of an applicant are class IV employees in the State service, the aggregate annual income will be

more than the ceiling fixed in Ext. P-1. Simply because they have got an income above the ceiling fixed, can they be considered as not socially and educationally backward and their son or daughter be denied an admission. Viewed from another angle also this ceiling of Rs. 6,000/- is highly arbitrary. A family whose annual income is less than the ceiling fixed will not be in a position to send their children to a Medical College. To maintain a son or daughter alone in a Medical College more than fifty per cent of their annual income will be necessary. With the balance left, the head of the family will not be in a position to make both ends meet considering the high cost of living at present. The ceiling of income provided by Ext. P-1 G. O. is highly arbitrary and hence cannot be sustained.

19. In the result, these original petitions are allowed. The petitioners in these Original Petitions who have got more marks than the minimum fixed this year for their caste or community as the case may be are entitled for admission to the first M. B. B. S. course 1974-75 in the seats reserved for candidates from the respective caste or community to which they belong. There will be no order as to costs. Carbon copies of this judgment are to be furnished to the Government Pleader appearing in the case free of costs and to the counsel for the petitioners on payment of the usual charges.
Petitions allowed.