PATNA HIGH COURT

Umesh Chandra Sinha

Vs

V.N. Singh

Civil Writ Judicial Case No. 51 of 1967

(R.L. Narasimham, C.J., U.N. Sinha and Tarkeshwar Nath, JJ.)

10.04.1967

JUDGMENT

Narasimham, C.J.

1. The petitioner was an applicant for admission to the Patna Medical College, which is an institution under the control or the Patna University. He was not selected for admission, and the present application under Article 226 of the Constitution has been filed mainly for a declaration that some of the provisions of the Ordinance (Annexure-I) made by the said University for admission of students to the medical course were unconstitutional and for the issue of an appropriate writ on the authorities concerned to reconsider the case of the petitioner striking down the alleged invalid clauses of the said Ordinance. In the original petition it was claimed that the petitioner was entitled to be admitted, but in a supplementary petition this prayer was modified and Shri Baidyanath Prasad, Counsel for the petitioner, made it clear during the course of his arguments that all that the petitioner desired was that after ignoring the unconstitutional provisions the petitioner's case for admission should be considered and disposed of in accordance with the valid portions of the Ordinance.

2. The Patna University is a statutory body established by the old Bihar and Orissa Legislature in 1917 by the Patna University Act, 1917 (Bihar and Orissa Act 16 of 1917). That Act with its subsequent amendments continued in force till 1951, when it was repealed and replaced by the Patna University Act, 1951 (Bihar Act 25 of 1951). That Act was replaced by the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960 (Bihar Act 14 of 1960), which was again repealed and replaced by the Patna University Act, 1961 (Bihar Act 3 of 1962) (hereinafter referred to as the Act), which is the Act at present in force. Section 30 of the Act empowers the Senate of the University to make Statutes for the purposes mentioned in that section, and Sub-Section (4) of section 35 says that the Statutes so made shall not be valid unless assented to by the Chancellor (Governor of Bihar). Section 32 confers power on the Syndicate of the University to make Ordinances, subject to course to the provisions of the Act and the Statutes. One of the subjects which may be dealt with in the Ordinances is "the admission of students to the University and their enrolment as such" (clause (a)), Section 33 says that an Ordinance made by the Syndicate shall be submitted to the Chancellor and the Senate, and the

Senate is given full power to reject the Ordinance or to approve it with such modifications as may be considered necessary. The proviso to Section 33, however, confers emergency power on the Chancellor to direct the coming into force of the Ordinance passed by the Syndicate without obtaining the approval of the Senate. Section 34 deals with the power of the Academic Council of the University to make Regulations for the purposes mentioned in that section. Section 35 confers rule-making power also on the various authorities of the University. Thus the Scheme of the Act is to confer power on the various authorities of the University, namely, the Senate, the Syndicate and the Academic Council, to make Statutes, Ordinances and Regulations and also to make Rules for the various purposes mentioned in the relevant sections concerned. In pursuance of the powers conferred by section 32, the appropriate authorities made the Ordinance for admission of students to the medical course (Annexure-I). The Ordinance consists of six clauses. The first clause contains detailed instructions about calculating the marks to be awarded to each applicant for admission on a somewhat artificial basis. It is unnecessary to refer to these details here. Clause 2, however, may be quoted in full :-

> "2. Out of the total numbers of seats the following allotment of seats shall be made on the conditions prescribed hereunder :-

(a)	To students belonging to scheduled castes.	8% seats
(b)	To students belonging to scheduled tribes.	7% seats
(c)	To students belonging to backward classes as mentioned in Annexure-I.	10% seats
(d)	To women students.	20"
(e)	To students who are sportsmen and who in the opinion of the Principal of the college concerned, on the approval of the Vice-Chancellor, have distinguished themselves as players or athletes even though they are not eligible to be included in the merit list of candidates for admission.	2"
(f)	To sons and daughters of employees of the University receiving salary upto Rs. 100 per month on the ground of their extreme pecuniary difficulties even though they are not eligible to be included in the merit list of candidates for admission, on the approval of the Vice-Chancellor.	2"
(g)	To sons and daughters of employees	2"

	of the University who may have rendered meritorious service to the University even though they are not eligible to be included in the merit list of candidates for admission, on the approval of the Vice-Chancellor	
(h)	To students who are included in the merit list of candidates prepared in accordance with the provisions of this Ordinance.	Remaining seats after deducting the allotments made under (a) to (g) above."

It will be noticed that under sub-clauses (a), (b), (c) and (d) of the said clause, 45 per cent of the total seats in the Medical College are reserved for students of the scheduled castes, scheduled tribes, backward classes and women students. Sub-clause (e) reserves two seats for sportsmen and athletes. Sub-clauses (f) and (g) reserve four more seats for children of the poor employees of the University and for the children of those employees who have rendered meritorious service to the University, respectively Sub-clause (h) says that the remaining seats shall be allotted to candidates in order of merit in accordance with the marks calculated under clause 1. Clause 3 fixes a minimum of total marks required for admission. Clause 4 further says that if any of the categories of the seats described in sub-clauses (a) to (g) remains unfilled due to non-availability of eligible candidates, those seats may be filled by following the principle of merit described in sub-clause (h). Clause 5 deals with the restrictions and conditions for admission of students, but it is unnecessary to refer to that clause in detail here.

3. The petitioner's case was that his total marks were 50.2 per cent; and though he was denied admission, some of the candidates who got less marks than the petitioner were given admission mainly on the basis of sub-clauses (e), (f) and (g) of clause 2 of the Ordinance. It was urged that these sub-clauses were discriminatory in nature and were not saved by clause (4) of Article 15 of the Constitution. Counsel for the petitioner, therefore, urged that sub-clauses (e), (f) and (g) should be struck down as unconstitutional and the appropriate authorities should be directed to reconsider the application of the petitioner in accordance with the remaining provisions of the Ordinance. The constitutionality of sub-clauses (a), (b), (c) and (d) was not challenged at the time of arguments and they will be clearly protected by clause (4), read with clause (3) of Article 15 of the Constitution.

4. It is academic to consider the constitutional validity of sub-clause (e). The students who were selected on the basis of this sub-clause were not made parties to this writ petition. Moreover, there is the affidavit of the Head clerk of the Medical College to the effect that the two students who were selected on the strength of this sub-clause. namely, Ramesh Kumar Sharm and Shivabrata Mullick, got more marks than the petitioner in the aggregate. The learned Advocate-General, however, invited our attention to a judgement of the Mysore High Court in *Subhashini v. State of Mysore*[1], where reservation of seats for candidates with exceptional skill and aptitude in sports and games was held to be constitutional. But for the reasons already stated it will be academic in this writ petition to consider the constitutional validity of sub-clause (e) of clause 2,

and I would leave this question open.

5. The main attack is in respect of sub-clauses (f) and (g). These sub-clauses, however, were subsequently amended by the Senate at its meeting held on the 1st December, 1966, and the following provisions were substituted in place of old sub-clauses (f) and (g) :-

> "To sons and daughters of the employees of the university, 4 seats.
> (i) two seats shall be reserved for sons and daughters of teachers and officers of the University who may have rendered meritorious service to the University even though they are not eligible to be included in the merit list of candidates for admission, on the approval of the Vice-Chancellor.
> (ii) two seats shall be reserved for sons and daughters of the employees of the University other than teachers and officers of the University on grounds of their extreme pecuniary difficulties even though they are not eligible to be included in the merit list of candidates for admission on the approval of the Vice-Chancellor. Provided that in case of any seat remaining unfilled in any of the sub-categories (i) or (ii) above, the same may be filled up by Applicants of the other sub-categories".

When these amendments were sent to the Chancellor, he by his letter No. PU-2/67-283-G. S. (II), dated the 19th January, 1967, suggested a reconsideration of these provisions on the ground that they were prima facie illegal and discriminatory. Neither the Syndicate nor the Senate was, however, prepared to accept this suggestion of the Chancellor, and one of the points in controversy between the parties is whether the said provisions, as amended, have validly come into force. It was urged that inasmuch as sections 32 and 33 of the Act do not require the assent of the Chancellor for the coming into force of the Ordinance, whereas such assent is required for the coming into force of the statutes made under section 30 [see section 31 (4)], the amended provisions of the Ordinance must be deemed to have been validly made notwithstanding the opinion of the Chancellor about their unconstitutionality. It is unnecessary to decide this point here because, according to Counsel for the petitioner, the amended and the unamended provisions should both be struck down as discriminatory and unconstitutional. For the purpose of disposal of this writ, therefore. I shall examine the constitutional validity of sub-clauses (f) and (g) of clause 2 as amended by the Senate at its meeting held on the 1st December, 1966, (quoted above) and also the old unamended provisions.

6. In paragraph 11 of the petition four candidates, namely, Vinod Yadav, Rekha Mitra, Arun Choudhary and Anil Singh, were alleged to nave been admitted in pursuance of sub-clauses (f) and (g). But it was admitted that Vinod Yadav obtained 55 per cent marks. Similarly, Reklia Mitra obtained 53 per cent marks and, moreover, she is a lady student whose selection can be justified under sub-clause (d) of clause 2. Hence Mr. Baidyanath Prasad quite properly conceded that he would not challenge the legality of the selection either of Vinod Yadav (respondent No. 5) or Rekha Mitra (respondent No. 6). As regards respondent No. 7, Arun Choudhary, it was alleged that the total marks obtained by him were only 50 per cent, below that of the petitioner. But a counter-affidavit has been filed by this respondent to the effect that the total marks obtained by him on correct calculation came to 51.9 per cent, which is higher than the marks obtained by the petitioner. This statement has not been challenged and hence I must hold that the

admission of Arun Choudhary (respondent No. 7) cannot be challenged in this petition. The only two candidates whose admission is challenged are Anil Kumar Sinha (now respondent No. 3) and Anil Singh (respondent No. 8). Anil Singh obtained only 45.6 per cent of the marks, whereas Anil Kumar Sinha, on his own affidavit, obtained only 45.8 per cent of the marks. It may, therefore be taken as unchallenged that these students, namely, Anil Kumar Sinha (respondent No. 3) and Anil Singh (respondent No. 8), would not have secured admission if merit had been the sole test, and that they secured admission by virtue of sub-clauses (f) and (g) of clause 2. This writ, therefore, will be confined solely to the examination of the validity of their selection and it will not affect the selection of the other candidates already made.

7. Before discussing the main questions I may dispose of a preliminary objection raised on the ground of undue delay. The writ application was filed on the 24th January, 1967, and the explanation given for the delay was that the petitioner had made representations to the Principal, Vice-Chancellor and Chancellor, but no reply was received from them. It was further stated by counsel for the petitioner that respondent No. 3, Anil Kumar Sinha, was admitted only on the 24th December, 1966, whereas respondent No. 8, Anil Singh, was admitted on the 9th December, 1966, and it was only after the admission of Anil Kumar Sinha that the petitioner lost all hopes of admission, and after making representations to the authorities concerned filed this application before this court on the 24th January, 1967. This delay, however, should not be given too much importance, because, as pointed out in *Raghuramulu v. State of Andh. Pra*[2]*.,* where constitutional questions are raised, the mere fact that selections have already been made cannot affect the right of the aggrieved party, though the nature of the relief that may have to be granted to him may, to some extent, require suitable modification.

8. The main contentions raised by Mr. Lal Narain Sinha, Advocate-General, for the University against the petitioner are these :-

> (1) The petitioner has no justiciable right to file this petition inasmuch as even if sub-clauses (f) and (g) are struck down as unconstitutional, there are nine candidates who have secured more marks than the petitioner (sea Annexure-
> 'B') and they will have to be given preference while making selection on merit. Hence it was urged that the petitioner has no reasonable chance of being admitted.
> (2) The Patna University is not a "State" as defined in Article 12 of the Constitution, and consequently, neither Article 14 nor Article 13 can be availed of by the petitioner.
> (3) In any view of the case, the giving of preference to the children of the poor employees of the University and to the children of those employees who have rendered meritorious service to the University is not discriminatory. These are the main questions for consideration now.

9. It is not denied that there are nearly nine candidates above the petitioner in order of merit and hence even if the selection of two of the candidates, namely. Anil Kumar Sinha and Anil Singh, is struck down as unconstitutional, the petitioner cannot claim a right of being admitted unless all the candidates who got higher marks than him decline to join the college. Mr. Baidyanath Prasad, Counsel for the petitioner, however, urged that as an applicant for admission the petitioner is entitled to a consideration of his application in accordance with laws which are constitutional and

valid, and that right of his cannot be taken away merely because ultimately candidates who are more meritorious than the petitioner may be admitted. In my opinion this contention must be accepted. The right of a candidate for due consideration of his application for admission on the basis of valid law is distinct from the right of another candidate to be admitted on the basis of such laws. The distinction between these two rights has been brought out by me in *Sunil Bhatia v. Patna University*[3], in the following passage :-

> "It is true that as an applicant for admission he is entitled to have his case considered in accordance with law (meaning valid law), but he cannot go beyond that and claim admission as of right."

The two rights are distinct and each of them is justiciable. Thus in *State of Madras v. Sm. Champakam Dorairajan*[4], the only words of caution used by their Lordships were :-

> "But we desire to guard ourselves against being understood as holding that we approve of a person who has not actually applied for admission into an educational institution coming to court complaining of infringement of any fundamental right under Article 29(2)."

These words of caution would impliedly suggest that a candidate who has actually applied has a right to complain of infringement of his fundamental rights even though ultimately he may not be able to secure admission. In *V. Raghuramulu's case*[5], the learned Judges, while granting relief to the petitioners, observed as follows :-

> "The applications of the two petitioners may now be considered by the respondent and if they have preferential claims over others who have already
>
> been selected they may be provided for by creating two additional seats."

This decision was followed by the Mysore High Court in *Ramakrishna Singh Ram Singh v. State of Mysore*[6], where also, without deciding whether the petitioners were entitled to admission the learned Judges, after striking down the unconstitutional provisions, observed at page 352 (paragraph 39) as follows :-

> "There will, therefore, be an order that the applications of the petitioners be considered without any reference to the orders impugned in these petitions but subject to the reservations for the scheduled castes and scheduled tribes made therein. If on such consideration it is found that they would have been admitted then provision be made in the Colleges, if necessary, even by creating additional seats for that purpose."

This judgement of the Mysore High Court was referred to in *M.R. Balaji v. State of Mysore*[7], and not dissented from.

10. Apart from the aforesaid decisions, on general principles also the petitioner must be held to

have the necessary locus standi to move this petition. I may quote the following passage from S. A. de Smiths Judicial Review of Administrative Action at pages 442, 443 and 444 :-

> "There is, indeed, a good deal of judicial support for the view that a mere stranger has no locus standi, and that an applicant must establish that he is specially aggrieved by the non-performance of the duty or has an immediate interest in its performance greater than that of members of the public generally." (Page 442 ibid).
> "Certainly the courts have on occasion shown the utmost liberality in granting applications made by persons whose interest in the performance of the duty in question has been tenuous". (Page 443 ibid).
> "In deciding how substantial that interest must be in a particular context the courts are undoubtedly entitled to exercise their discretion. It would seem that the applicant's interest must normally be more substantial than the general interest of the other members of the local community or interest-group to which he belongs, but that this is not necessarily a rule of universal validity."

These observations show that so long as the interest of the applicant is not merely that of the general public he has a right to move the court. Here the petitioner's right to challenge the constitutional validity of the impugned provisions is higher than the right of the general public because he has actually applied for admission.

11. In America also the recent trend seems to be to take a more liberal view on this subject. I may quote the following passage from American Jurisprudence, Vol. 34, pages 850, 851 :-

> "A mere abstract right, unattended by any substantial benefit to the relator, will
> not be thus enforced. But as indicated above, the use of mandamus has been extended beyond its earlier limits, and in some jurisdictions where it is desired to obtain an authoritative determination of some purely legal question for the guidance of public officials, mandamus has become the familiar vehicle to accomplish that objective."

12. It should, also be remembered that here the infringement alleged is in respect of Article 14 which as pointed out in *Basheshar Nath v. Commissioner of Income-tax, Delhi and Rajasthan*[8], is a command issued to the State and cannot be waived by any person. In Articles 14, 15 and 16 the emphasis is more on the constitutional duty of the State than on the right conferred on an individual unlike Article 31. Hence the nature, of the interest which an applicant has to establish while seeking the help of this court under Article 226 where infringement of Article 14 is alleged may be less tenuous than the interest which he has to establish where infringement of some other Article in Part III, such as Article 31, is alleged. I may also refer to *State of Uttar Pradesh v. Deoman Upadhyaya*[9], where it was pointed out that for the purpose of Article 14 of the Constitution American decisions should be given great weight.

13. For these reasons, I am of opinion that the petitioner has sufficient justiciable interest to apply

to this court for examination of the! constitutional validity of the offending provisions of the Ordinance, namely. Sub-clauses (f) and (g) of Clause 2.

14. Mr. Lal Narain Sinha urged that even if the petitioner succeeds in his contention regarding the invalidity of sub-clauses (f) and (g) of clause 2 of the Ordinance, the chances of his securing admission are very remote, inasmuch as there are several other candidates who obtained more marks than the petitioner and that if they press for the consideration of their claim for admission, they will have to be given preference. In support of this argument reliance was placed on an affidavit filed on behalf of respondent No. 3, Anil Kumar Sinha, on the 23rd February, 1967, to the effect that four of the abovementioned class of candidates, namely, Ramashis Singh, Ram Krishna Prasad Singh, Shailendra Kumar Singh and Awadhesh Kumar Kashyap, informed the deponent that they were ready, willing and eager to take admission in the Medical College if an opportunity was given to them. Too much importance, however, cannot be attached to this affidavit, because the candidates concerned have not come forward either by way of joining in the present application with the petitioner or by way of filing affidavits in this court declaring their intention. Neither the Vice-Chancellor nor the Principal of the College has stated on affidavit that those candidates who have got higher marks than the petitioner have taken any step before them to show their intention to press for their claim in the event of our striking down sub-clauses (f) and (g) of clause 2. On the materials before us we must, therefore, hold that apart from filing their applications for admission before the commencement of the session they have not taken any step to press their claim for admission. It is also well known that even the candidates to whom admissions are given sometimes do not
join on the due date, with the result that other candidates get admitted. This fact is admitted in the counter-affidavit filed by one Hafiz Abdul Rahman on behalf of the Principal of the College on the 7th February, 1967, in respect of a girl student. It will not, therefore, be proper to reject this petition merely because there are some candidates who have secured higher marks than him and there is a possibility that they may press their claim for admission in the event of the petitioner's success in this litigation. I can not also ignore the fact that at the end of the academic session the probability that these candidates might have joined other educational institutions and may not agree to seek admission in the Medical College cannot be wholly excluded, as urged by learned Counsel for the petitioner. Mr. Baidyanath Prasad made it absolutely clear that he was willing to take the risk that is involved if even after his success in this petition and the due consideration of his application along with that of other deserving candidates preference is given to candidates who have obtained higher marks.

15. The next question for consideration is whether the Patna University is a "State" as defined in Article 12 of the Constitution. That Article says that the word "State" includes the Government" and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The Advocate-General relied on the *University of Madras v. Shantha Bai*[10], where the words "other authorities" in the aforesaid definition were construed ejusdem generis and held not to apply to an authority which does not exercise sovereign or governmental functions. This Madras decision has been followed in *S.K. Mukherjee v. Chemicals and Allied Products, Export Promotion Council*[11], and *Sm. Ena Ghosh v. State of West Bengal*[12], and *B.W. Devadas v. Selection Committee for admission of students to the Karnatak Engineering College*[13], In Basu's (now justice Basu) commentary on the Constitution of India, 5th edition, page 141, however, this Madras decision has been adversely commented upon, but his comments themselves have been

criticised in a subsequent judgement of the Punjab High Court in *Krishan Gopal Ram Chand v. Punjab University*[14] On the other hand, Mr. Baidyanath Prasad cited *Bramadathan Nambooripad v. Cochin Devaswom Board*[15], where the words "other authorities" were not construed in the ejusdem generis sense but in their ordinary dictionary and literal sense as meaning a body exercising the power to issue rules, bye-laws or regulations having the force of law. It is true that in the Travencore-Cochin case the Madras decision was not noticed, but in a recent judgment of the Rajasthan High Court in *Mohan Lal v. State*[16], doubt was case on the correctness of the aforesaid Madras view, and the view taken by the Travencore-Cochin High Court was adopted.

16. In a very recent judgement of their Lordships of the Supreme Court, *Rajasthan State Electricity Board. Jaipur v. Mohan Lal*[17]), their Lordships by a majority while dismissing the appeal filed against the judgment of the Rajasthan High Court, AIR 1966 Rajasthan 1, noticed the views taken in the aforesaid Madras, Mysore and Punjab judgments and held them to be incorrect. Their Lordships observed that the application of the principle of ejusdem generis construction in construing the words other authorities" occurring in Article 12 of the Constitution in the aforesaid judgments was incorrect and that the words should be given their full dictionary meaning. To quote their own words :-

> "These decisions of the court support our view that the expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities . . . .The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

In view of this decision of their Lordships it must be held that the aforesaid Madras, Mysore and Punjab High Courts decisions, have been overruled and the view taken by the Travencore-Cochin and Rajasthan High Courts has been upheld. Mr. Lal Narain Sinha, however, made an over-subtle distinction and urged that though the ejusdem generis construction adopted in the Madras, Mysore and Punjab judgments was held to be incorrect, their Lordships of the Supreme Court did not hold that the Madras University or the Punjab University or the Karnatic Engineering College were "States" within the meaning of Article 12. It is unnecessary to elaborate this point because I am fully satisfied that the only reasonable conclusion that can be drawn from the majority judgment of the Supreme Court is that any public authority created by the statute on whom powers are conferred by law must be held to be a State irrespective of whether the functions of that authority are sovereign functions or non-sovereign functions, such as spread of education, etc.

17. The University of Patna is on identical footing with the Universities of Madras and the Punjab, and hence it must be held, following the aforesaid decision, that the Patna University is also a State for the purpose of Article 12. It is a public statutory body created by the appropriate Act of the Legislature and it has been empowered to make Statutes, Ordinances and Regulations by the Legislature. The laws made by the University in exercise of these powers will come within the definition of "law" as given in Article 13(3)(a) of the Constitution, and consequently they must conform to the fundamental rights provided in Part III of the Constitution.

18. This leads to the most important question for decision in this case, namely, whether sub-clauses (f) and (g) of clause 2 (with or without amendment) are discriminatory and as such violative of Article 14 of the Constitution. The scope of Article 14 has been explained in innumerable decisions of the Supreme Court and it is unnecessary to refer to them here. It is sufficient to say that reasonable classification for purposes of special treatment is permissible and the test of reasonableness will be (1) whether the classification is rational and based on intelligible differentiation which distinguishes the persons or things that are grouped together from others that are left out from the group, and (2) whether the basis of differentiation has any rational nexus or relation with the policy or objects of the law, (see Ramkrishna Dalmia's case, 1959 SCR 279 : (AIR 1958 SC 538)). Judged by this test it is difficult to uphold the reasonableness of the preferential treatment given to the children of the employees of the University who are either poor or have rendered meritorious service to the University. If the University had been a private body, there may be some justification for giving preferential treatment to the children of its own employees, but a public body which is maintained, partly at any rate, by public funds (see section 40) cannot give preferential treatment to the children of its own employees without offending Article 14. In this connection I may refer to the observations of their Lordships of the Supreme Court in AIR 1963 SC 649 at p. 664 where it was suggested that the making of monetary grants to those students whose parents have an annual income below a prescribed minimum may be one of the methods of helping such students without contravening Article 15. There seems no reasonable nexus between the object intended to be achieved by the Ordinance on the one hand and the principle on which the children of the employees of the University are selected for preferential treatment on the other. The object to be achieved by the Ordinance is the making of provision for proper selection of candidates for admission to the Medical course. Requirements about health, minimum marks or proficiency in some special subjects and merit may all be justified as being reasonable, but I find no reasonable nexus between the principle governing admission to the college on the one hand and the pecuniary difficulties or the meritorious services rendered by the employees of the Universities on the other Preferential treatment to the children of these employees would amount to favouritism and patronage. No case has been cited before us where such preference in the matter of admission to the educational institutions has been held to be reasonable. The Mysore case, AIR 1966 Mysore 40 justified discrimination only as regards children of men in Armed Forces and ex-Service men and those who had shown skill in sports and games.

19. Mr. Lal Narain Sinha, however, contended that the provision in the Ordinance which authorizes the giving of special preference to the children of the employees of the University who have rendered meritorious service to the University [sub-clause (g) of clause 2 of the unamended Ordinance and paragraph 1 of the amended Ordinance] did not offend Article 14. because (according to him) there was a rational nexus between the object to be achieved by the provision on the one hand and the principle on which this class of candidates were grouped together for the purpose of discrimination on the other. According to him, the efficient performance of the functions by the University depends on the meritorious service rendered by its employees, and with a view to encourage such meritorious service it could, in the Ordinance, reserve certain seats for the children of such employees. He urged with considerable ingenuity that the grouping for the purpose of classification was essentially of the meritorious employees of the University and that there was a reasonable nexus between the person so grouped together on the one hand and the provision in the Ordinance which conferred benefit on them on the other. This argument is wholly untenable. If the impugned law dealt with the conditions of service of the employees of

the University, there may be some support for the view that in such a statutory provision special facilities and concessions may be given to those employees who have rendered meritorious service. But here the impugned provision is in an Ordinance whose sole object is to provide for admission of students to the medical course. This sole purpose of the Ordinance cannot be lost sight of.
There is no rational nexus between the securing of admission of candidates to the Medical College on the one hand and the conferring of special concession or benefit to meritorious employees of the University on the other. Moreover, the impugned provision confers such a concession on the children of such employees and not directly on the employees. It is a concession given to them solely on account of their being the children of such employees, which will amount to discrimination solely on the ground of descent and will offend Article 14. If the argument of Mr. Lal Narain Sinha is accepted as correct, the State Government also may as well say that, as the Government is making handsome contribution to the finances of the University, some seats should be reserved for the children of Government servants who have rendered meritorious service to the Government. We cannot sustain a provision which will lead to favouritism and patronage. So far as sub-clause (f) of clause 2 (unamended) and paragraph 2 of the amended provision of the Ordinance is concerned, no attempt was made to justify the same. By these two provisions some seats were reserved for the children of those employees of the University who were in extreme pecuniary difficulties. Such discrimination must also be pronounced to be unreasonable for similar reasons.

20. Mr. Baidyanath Prasad contended that discrimination can be made only in favour of those persons described in Clause (4) of Article 15 of the Constitution and that discrimination in favour of other persons must be held to be unconstitutional. I am, however, unable to accept this extreme contention. Article 14 is the main provision against discrimination. Articles 15 and 16 are meant to supplement the main provisions of Article 14 in respect of special matters mentioned therein. But if it could be shown that there was a reasonable basis for classification apart from the provisions of Article 15(4), the validity of the law may be sustained. Here, however, for the reasons already given, I must hold that the preferential treatment given to the children of the employees of the University by sub-clauses (f) and (g) of clause 2 of the Ordinance, either in its original form or after the amendment made on the 1st December, 1966 is unreasonable and violative of Article 14. Those sub-clauses must, therefore, be struck down as invalid.

21. I have given my anxious consideration to the nature of the order that should be passed in this case. Respondents 3 and 8, Anil Kumar Sinha and Anil Singh, have Joined the College on the 24th December and 9th December, 1966, respectively, paid the fees and are attending the lectures. It may not be proper to cancel their admission at this belated stage, though we must hold that they secured admission on the strength of the invalid provisions of the Ordinance. Under these circumstances the order passed in AIR 1958 Andhra Pradesh 129 and AIR 1960 Mysore 338 may be taken as a guide. As already pointed out, the said Mysore case was referred to in AIR 1963 SC 649, where the actual order passed by the Mysore High Court was not adversely commented upon. I am conscious of the fact that the academic term is now nearing its end. A statement showing the date for payment of fees for the examination has been filed before us which shows that the examination for the 1st year M. B. B. S. course will be held on the 10th May, 1967, and the last date for payment of fees for that examination is the 14th April, 1967. It was urged by Mr. Lal Narain Sinha that even if the petitioner ultimately secures admission he

would not be able to complete the minimum percentage of attendance required by the rules of the University and that consequently he is not likely to be sent up for the examination. In reply to this Mr. Baidyanath Prasad invited our attention to the fact that the said Anil Kumar Sinha and Anil Singh joined the college only in December and as all the educational institutions in the State were closed in the months of January and February, 1967, (of which judicial notice can be taken) these two students also will not be completing the minimum percentage of attendance required by the rules. At this stage we are not concerned with whether the petitioner will be sent up for the examination or else whether the failure to secure the minimum attendance will be condoned (if permissible) in view of the fact that the delay was due to circumstances beyond the control of the petitioner. These are matters to be dealt with by the authorities concerned in accordance with the rules and regulations in force in the University. The petitioner is prepared to take all the risks involved in securing admission at such a belated stage. Once we hold that the offending provisions are unconstitutional, we should not deny him the appropriate relief merely because some other consequence may ensue later on.

22. At the conclusion of arguments Mr. B.C. Ghosh raised a new contention to the effect that the University was a necessary party inasmuch as the Ordinance made by the University was under challenge and that the omission on the part of the petitioner to make the University a party must be held to be fatal to the granting of relief. This contention was never made at an earlier stage, though this case was argued before a Division Bench in February last. The Vice-Chancellor of the University was made a party (respondent no. 2) and under Sub-Section (6) or section 10 of the Patna University Act he is the principal executive and academic officer of the University. In the affidavit filed on his behalf on the 17th February, 1967, by one Nand Kishore Prasad the Head Assistant of the University it was stated as follows :-

> "A supplementary counter-affidavit on behalf of the Patna University." This statement in the affidavit is conclusive on the question that the Vice-Chancellor entered appearance on behalf of the University and also filed the affidavit through one of his employees on behalf of the University. It must, therefore, be held that the University was adequately represented by the Vice-Chancellor. The technical objection raised by Mr. Ghosh at this belated stage must be rejected.

23. For these reasons, we strike down sub-clauses (f) and (g) of clause 2 of the Ordinance (both the original and the amended provisions) as unconstitutional. We further direct the issue of a writ to respondents 1 and 2 to reconsider the application of the petitioner for admission on merits after ignoring the said two sub-clauses. If on such reconsideration it is ultimately found that he has a preferential claim over those who have been admitted, steps may be taken to admit him within three days from today by creating an additional seat, if necessary. As the matter has already been delayed due to circumstances beyond the control of the petitioner and the last date for deposit of fees for the first year M. B. B. S. integrated course is the 14th April, 1967, we cannot give more than three days' time to respondents 1 and 2 to implement our order. The petition is allowed, accordingly with costs. Hearing fee : Rs. 100 payable by respondents 1 and 2 only.

U. N. Sinha, J.

24. I agree.

Tarkeshwar Nath, J.

25. I agree.

Petition allowed.

Cases Referred.

[1] AIR, 1966 Mys 40 at p. 46, paragraph 16
[2] AIR 1958 And Pra129 at p. 131 pr. 12
[3]1965 BLJR 229 at p. 235
[4] AIR 1951 SC 226
[5] AIR 1958 And Prad 129
[6] AIR 1960 Mys 338
[7](AIR 1963 SC 649, paragraph 5)
[8] AIR 1959 SC 149
[9] AIR 1960 SC 1125
[10] AIR 1954 Mad 67
[11] AIR 1962 Cal 10
[12] AIR 1962 Cal 420
[13] AIR 1964 Mys 6
[14] AIR 1966 Pun 34
[15] AIR 1956 Trav Coc 19
[16] AIR 1966 Raj 1
[17](Civil Appeal No. 466 of 1966, D/d. 3-4-1967 (SC)