PATNA HIGH COURT

Amalendu Kumar

Vs

The State of Bihar

(S Jha, C.J. Uday Sinha and B P Sinha, JJ.)

07.05.1979

JUDGMENT

Uday Sinha, J.

1. By this application under Articles 226 and 227 of the Constitution the petitioner has prayed for quashing annexures 3 and 4. The application originally was for quashing an-nexure-3 only. While the application was pending admission, the State Government issued annexure-4 to the great prejudice of the petitioner. Prayer was, therefore, made for quashing annexure-4 as well. The petitioner has prayed for issuance of a writ of mandamus restraining the respondents from giving effect to Government orders contained in annexures-3 and 4.

2. The petitioner is a candidate for admission to the first year Medical course, commonly known as M.B.B.S., in any of the several Medical Colleges in this State for the session 1978-79. In this State there are Universities located at Patna, Ranchi, Muzaffarpur, Bhagalpur, Gaya (Magadh) and Darbhanga (Mithila). The academic standards and the examination results are anything but uniform. Previously admissions to medical colleges used to be done on the basis of marks obtained by candidates at the Intermediate Science Examinations and a candidate in any part of the State was entitled to seek admission in any of the several Medical Colleges. The disparity in the examination results posed a serious problem. The State Government, therefore, introduced a combined competitive Examination for selecting candidates for admission into all Medical Colleges, thus reducing all the aspirants for admission to a common denominator. The State Government issued a prospectus (Annexure-1) for admission to the Medical Classes for the session 1978-79 laying down the criteria and conditions for admission to M.B.B.S. Course. The Colleges covered by this prospectus were the following:--

(1) Patna Medical College.

(2) Darbhanga Medical College.

(3) Qajendra Medical College, Ranchi.

(4) Bhagalpur Medical College.

(5) Mahatma Gandhi Memorial College, Jamshedpur.

(6) Shri Krishna Medical College, Muzaffarpur.

(7) Nalanda Medical College, Patna (8) Magadh Medical College, Gaya.

(9) Pataliputra Medical College Dhanbad, and (10) Bihar Dental School Course, Patna, Dental College.

The prospectuses were issued by respondent No. 4 in the capacity of Convener of the Pre-Medical and Dental Test 1978. He also happened to be the Princinal of, Bhagalpur Medical College. The prospectus prescribed in paragraph 1A a minimum requirement of 50% marks in the competitive test in order to enable a candidate to be admitted to the Medical course. In case of Scheduled Caste and Scheduled Tribes the minimum requirement was pegged at 45%. This competitive examination was of one paper only. The subjects for examination were Physics and Chemistry, 40 marks each, Botany and Zoology, 20 marks each. In paragraph 6P it was laid down as follows:--

> "Candidates will be selected for admission strictly on the basis of merit (as given in A), subject to reservation of seats as per Government rules".

Paragraph 8 of the prospectus read as follows :--

"8. The reservation of seats for ad mission in different Medical Colleges of Bihar will be as follows:--

(i) Scheduled Caste - 14%
(ii) Scheduled Tribes - 9%
(iii) Backward - 10%
- 33%

Moreover in view of the requirement of Lady doctors 20 per cent of the seats will be earmarked for ladies. The calculation for above reserved and earmarked seats will be done after deducting

seats already reserved for Government of India nominees, Self financing Nepalese students, TISCO Sri Lakshmi Narayan Trust, and Coal Mines Welfare Organisation etc."The total number of seats to be filled up are 670 out of which 38 seats are allocated for Central Government and other Bodies' nominees, 57 seats are reserved for Scheduled Tribes, 88 seats for Scheduled Castes and 63 for Backward classes and 127 seats were allotted for girls. In accordance with this procedure combined examination was held on the 16th July, 1978 as mentioned in the prospectus. This happened to be the 3rd Sunday of the month.

3. The petitioner appeared at the combined examination and secured 72.5% marks. A select list of students to be admitted was thereafter prepared in accordance with Annexure-1. It was then discovered that only 11 students of the Scheduled Tribes and 35 students of the Scheduled Castes had qualified for admission for the seats reserved for them. The result was that 46 seats reserved for Scheduled Tribes and 53 seats for the Scheduled Castes remained unfilled. In accordance with Government policy, effective since October, 1976, contained in Annexure-2 all the unfilled seats of the reserved quota were to be thrown open to candidates in the general quota. Annexure-2 is still in force and has not been whittled down even a wee bit. If the admissions had taken place on the basis of Annexures-1 and 2, the petitioner as averred, would have been selected for admission. The Additional Director of Health Services, however, issued a directive on 8-1-1979 (Anne-xure-3) to respondent No. 4, who happened to be the Convener of the Pre-Medical and Dental Training Course whereby it was laid down that the minimum qualifying marks for Harijans and Adivasis were to be 40%. Howsoever vague the expression "Harijan" may be counsel for the parties have accepted that this expression referred to members of the Scheduled Castes. This reduction of qualifying marks naturally put the chances of the petitioner being selected in serious jeopardy. He, therefore filed the present application for quashing Annexure-3. Before the application could be admitted, which took place on 27-2-1979, the Special Secretary in the Health Department issued another directive to respondent No. 4 which is Annexure-4 to this application. The petitioner, therefore, by a supplementary affidavit challenged the validity of Annexure-4, as well. Paragraph 4 of this Government Order is the only matter which concerns us in this application. That has been the subject of vigorous challenge on behalf of the petitioner. In paragraph 4 it was stated that by keeping in view that 40% minimum qualifying marks was likely to result in several seats in the reserved quota remaining unfilled, the admissions in the reserved quota should be done of the basis of 35% minimum qualifying marks. If any seat remained vacant even on the basis of this reduced qualifying mark they should be thrown open to candidates in the general quota. Since the validity of paragraph 4 of Annexure-4 has been seriously challenged, it is but meet that it should be quoted in extenso. It reads, as follows:--

> ^^gfjtu@vkfnoklh;ksa dk ukekadu% 40 izfr'kr izkIrkad dks U;wure lhek j[kus ls vkj{k.k dksVk ds vf/kdka'k LFkku fjDr jgus dh lEHkkouk dks /;ku esa j[krs gq;s 35

izfr'kr U;wure izkIrkad ds vk/kkj ij ukekadu fn;k tk; A blds ckn eh tks dqN LFkku cp tk; mlds fo:) lkekU; dksVk es mfEenokjksa dk ukekadu fd;k tk;** This reduction of the minimum qualifying marks almost crippled the chances of the petitioner getting admitted to any of the Medical Colleges in this State. The petitioner being left with no other alternative, filed the present application for the reliefs mentioned earlier.

4. Learned counsel appearing for the petitioner has contended that the reduction of the minimum qualifying marks from 45% to 40% and thereafter to 35% was completely annihilative of his fundamental right guaranteed by Article 15 (1) of the Constitution which prohibits discrimination of any citizen on grounds only of religion, race, caste sex, etc. Learned counsel for the petitioner did not challenge the initial fixing of 45% as qualifying marks for Scheduled Castes, Scheduled Tribes. Although learned counsel for the petitioner did not accept the validity of lower qualifying marks for Scheduled Castes and Scheduled Tribes, but Annexure 1 which set out 45% qualifying marks did not seriously affect the prospect of the petitioner gaining admission and, therefore, it was not considered necessary by him to challenge the validity of Annexure-1.

5. Besides hearing Mr. Bindeshwari Chaudhary, counsel for the petitioner we have also had the benefit of the submissions of Mr. Prabha Shankar Mishra, Amicus Curiae. We are beholden to Mr. Mishra for the assistance rendered to us.

6. After the application had been heard for one full day on 12-4-1979, the State filed a supplementary counter-affidavit on 16-4-1979. Since it was filed in the midst of the hearing in spite of objection of learned counsel for the petitioner and being contrary to the provisions of the Patna High Court Rules Chapter XXI-C Rule 6, we have refused to admit and look into the supplementary counter-affidavit. The supplementary counter-affidavit could be seriously impeached on several counts, but it is not necessary to go into those aspects since we have refused to take notice of it.

7. Learned counsel for the petitioner firstly contended that reservation of seats in any educational institution beyond 50 % of the available seats was annihilative of the protection guaranteed under Article 15 (1) of the Constitution. Article 15 (1) prohibits the State from discriminating against any citizen on the ground of religion, race, caste, sex, place of birth or any of them. After the decision of the Supreme Court in the case of *The State of Madras v. Smt. Champakam Dorairajan* [1]*(,* clause 4 was inserted and introduced by the Constitution (First Amendment) Act 1951 to ensure that any special provision made by the State for the advancement of any socially and educationally backward classes of citizen or for the Scheduled Castes and Scheduled Tribes may not be vulnerable to attack before a Court of Law. The Power of the State to make special provisions for the advancement of any socially or educationally backward classes or citizen or for the Scheduled Castes and Scheduled Tribes was not challenged on behalf of the petitioner.

All that was submitted on behalf of the petitioner was that while making such special provisions the larger interest of the nation or society could not be completely thrown to the winds for serving the ends of a section of the society or the nation. The petitioner placed reliance upon Articles 14, 15 (1) and Article 29 (2) to sustain his right to equality in the matter of admission to any of the Medical Colleges of Bihar.The reduction of the qualifying marks for Scheduled Tribes and Scheduled Castes, according to the petitioner, would be completely annihilative of the rights conferred upon a citizen by Article 15 (1) of the Constitution,

8. Learned Additional Advocate General, on the other hand, endeavour ed to sustain Annexures-3 and 4 to the extent that they were under attack on the basis of the provisions under Articles 15 (4) and 48. Article 46 enjoins upon the State to promote with special care the educational and economic interest of the weaker section of the people and any member of the Scheduled Castes and Scheduled Tribes, Article 46 being one of the directive principles of State policy, which has now been given a status of equality to, if not his her than, the fundamental rights, the submission was that Annexures-3 and 4 being parts of the endeavour of the State Government to promote the educational interest of Scheduled Castes and Scheduled Tribes, they were not vulnerable to attack on the ground that they contravened the fundamental rights enshrined in Article 15 (1).Learned Additional Advocate General secondly contended that the State could not be compelled to release unfilled Scheduled Castes and Scheduled Tribes seats if they are not filled up and, therefore, the petitioner has no cause of action in regard to unfilled seats.Learned Additional Advocate General thirdly contended that the relaxation in the qualifying marks for admission of Scheduled Castes and Scheduled Tribes candidates cannot adversely affect aspirants to the open general seats and, therefore, the petitioner has no right to present the present application.The submissions urged by counsel for the parties require serious consideration which I shall do hereafter.

9. Learned counsel for the petitioner firstly submitted that reservation of seats for castes or classes exceeding 50%, as in the present case is violative of constitutional safeguard contained in Article 15 (1) of the Constitution. It was submitted that in this case 53% of the seats had been reserved for special classes and, therefore, they were liable to be struck down. The mathematical calculation of the reservation, according to the petitioner, was as follows:

(1) Scheduled	castes	- 14%
(2) Scheduled	tribes	- 9%
(3) Backward	classes	- 10%
(4) Girls		20%
	Total	- 53%

Apparently Annexure-1 appears to present the picture of reservation of seats beyond 50%. According to Mr. Bindeshwari Chaudhary, the present case presented a picture contrary to the dicta in *M.R. Balaji v. State of Mysore*[2] *(R* approved in T. Devdasan's case (AIR 1964 SC 179 at p. 186). The fallacy, however, in this submission is that 20% seats for girls cannot be held to be a reservation. It is only a source of allotment. The question relating to reservation of seats for girls in Medical Colleges of Bihar was subject matter of consideration in Padmaraj Samarendra v. State of Bihar (C.W.J.C. No. 1753 and analogous cases of 1977) disposed of by a Full Bench of five Judges of this Court on 22-3-1978, (reported in AIR 1979 Pat. 266). The majority consisting of S. Sarwar Ali, J. (as he then was), Madan Mohan Prasad and S.K. Jha, JJ. took the view that allotment of 25 seats for girl students in the Medical Colleges of Bihar was not a reservation in strict sense of the term, but only an allotment of a source from which the seats had to be filled up. The majority view of the five Judges Bench is binding on this Full Bench comprised of three of us. That matter, therefore, is not open to challenge as on this date so far as this Court is concerned. The decision of the Full Bench besides being binding on this Bench, is also based on a review of the decisions of the Supreme Court. No decision of the Supreme Court taking any contrary view was brought to our notice. The reservation of 20% seats having gone out of the reserved quota, it is manifest, that reservation in the matter of admission to Medical Colleges has been made of only 33% of the seats. The ratio in Balaji's case (supra) and T. Devdasan's case (supra) in that behalf can be of no avail to the petitioner. The challenge to the reservations on the ground of reservation of more than 50% of the seats in the Medical Colleges in the State must, therefore, fall to the ground.

10. The really hotly contested aspect of the matter is whether the State Government was entitled to reduce the qualifying marks from 45% to 35%. Learned Additional Advocate-General did not dispute that laying down minimum qualifying marks has certain implications and is not an empty formality. He frankly conceded that relaxation in the matter of qualifying marks to any arbitrary level of, say 5% or 10% would be annihilative of the equality clause enshrined in Article 15 (1) of the Constitution. The constitutional validity in such eventuality cannot be saved, conceded Additional Advocate-General despite the provisions contained in Articles 15 (4) and 46 of the Constitution. The concession, to be fair to learned Additional Advocate-General, is well merited. It was, however, contended by him that the relaxation in the qualifying marks was not as absurd as suggested. The provision in fact is of reduction of the qualifying marks to 35% of the total marks and, therefore, the reduction was a measure aimed at advancement of Scheduled Castes and Scheduled Tribes and had the protection of Articles 15 (4) and 46.

11. It cannot be denied, and has not been denied by counsel for the petitioner and Mr. Prabha Shankar Mishra, that it is permissible, nay, desirable, for the State, to take effective steps for advancement of Scheduled Castes and Scheduled Tribes in the matter of education besides ameliorating their economic condition. Such a step would be conducive to the well being of the weaker section of the society and the socially and educationally backward classes without which the nation as a whole cannot prosper and bring out us best. In a society as ours where real and substantial equality has been the greatest casualty, there must be reservation in the matter of education for Scheduled Tribes and Scheduled Castes. The malady of exploitation of the down-trodden has found a niche in our Indian society for ages, if not a millennium. It would, therefore, be rash to expect that the malady can be cured overnight. It is bound to take time and yet the nation has got to survive and go on progressing for who lives if the nation goes asunder. A synthesis, therefore, has to be struck between the immediate needs of the society and the long term needs of the society. The immediate need is of getting best doctors by admitting the best possible candidates to our Medical Colleges and yet the Scheduled Castes and Scheduled Tribes have got to be brought at par with other classes of society, who are more fortunate and better placed. In regard to these conflicting claims the words of Hegde, J in A. Periakaruppan v. State of Tamil Nadu, (AIR 1971 SC 2303) in paragraph 22 are apposite and deserve quoting:

> "Undoubtedly we should not forget that it is against the immediate interest of the Nation to exclude from the portals of our medical colleges qualified and competent students but then the immediate advantages of the Nation have to be harmonised with its long range interests".

The two interests of the society can be synthesized by providing a reasonable lower minimum qualifying marks for admission to educational institutions for Scheduled Castes and Scheduled Tribes than for others. It is, therefore, manifest that reservation is permissible without completely doing away with minimum requisite standards of proficiency.

12. *In the State of Andhra Pradesh v. U.S.V. Balaram* [3]*R* it was observed as follows:--

"It is not necessary for us to refer to the various decisions laying down the contents of Article 14. Suffice it to say that it does not forbid reasonable classification. In order to pass the test of permissible classification, two conditions must be fulfilled: (1) The classification is founded on an intelligible differentia which distinguished persons or things that are grouped together from those left out of the group, and (2) the differentia must have a rational relation to the object sought to be achieved".In regard to the object sought to be achieved by competitive examination Wanchoo, C. J. in the case of *Rajendran v. State of Madras*[4] observed that considering the fact that there is a large number of candidates than seats available, selection has got to be made and the object of selection can only be to secure the best possible material for admission to colleges

subject to the provisions for socially and educationally backward classes.

In the case of *State of Andhra Pradesh v. P. Sagar*[5] *R* Mr. Justice Shah observed as follows :--

> "By Clause (4) a special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes is outside the purview of Clause (1). But Clause (4) is an exception to Clause (1). Being an exception, it cannot be extended so as in effect to destroy the guarantee of Clause (1). The Parliament has by enacting Clause (4) attempted to balance as against the right of equality of citizens the special necessities of the weaker sections of the people by allowing a provision to be made for their advancement. In order that effect may be given to Clause (4), it must appear that the beneficiaries of the special provision are classes which are backward socially and educationally and they are other than the Scheduled Castes and Scheduled Tribes, and that the provision made is for their advancement. Reservation may be adopted to advance the interests of weaker sections of society, but in doing so, care must be taken to see that deserving and qualified candidates are not excluded from admission to higher educational institutions."

Reiterating the views in Rajendran's case (Supra), it was stated in Ku. *Chitra Ghosh v. Union of India*[6] at para 10 that the object of selection for admission is to secure the best possible material.And lastly, A. N. Ray, C. J. also observed in *State of Uttar Pradesh v. Pradip Tandon (AIR 1975 SC 563)* at para 28 that educational institutions should attract the best talents.The pronouncements of the Supreme Court leave no manner of doubt that the object of all competitive examinations is to secure the best and the most suitable candidates. This objective can be fulfilled neither by leaving the Scheduled Castes and Scheduled Tribes to compete with other socially and educationally advanced Units of society nor can it be achieved by completely doing away even with a minimum standard of proficiency. No authority has been cited on behalf of the State laying down that in order to fulfil the objectives of Articles 15 (4) and 46 the requirement of laying down minimum qualifying standard may be done away with. It was observed in Ku. Chitra Ghosh v. Union of India (AIR 1970 SC 35) in para. 10 that the main purpose of admission to a Medical College is to impart education in the theory and practice of medicine. In P. Rajendran v. State of Madras (AIR 1968, SC 1012) also it was stated that the object of selection for admission to educational institutions (in that case again it was the Medical College) is to secure the best possible material. This according to their Lordships can surely be achieved by making proper rules in the matter of selection. It is thus obvious that requirement of minimum standard of proficiency is an essential condition for obtaining the dominant objective. Without specifying such minimum requirements the guarantee of Article 15 (1) of the Constitution would be illusory. That the guarantee is not illusory also follows from the

concession of learned Additional Advocate-General that the minimum qualifying marks for Scheduled Castes and Scheduled Tribes cannot be zero or any dismally low figure. If it was so done, candidates admitted to the portals of Medical Colleges would not be able to pass out successfully at the final examination. That would lead to blockade in the matter of turning out doctors, a class of persons whose existence is essential for human well being and existence. If by some executive fiat such candidates, who are unable to pass out the final test are declared as having passed the M.B.B.S. course, such quacks would be let loose on society with dangerous consequences. It is, therefore, imperative that Article 15 (1) can be meaningful only if minimum standards of proficiency are laid down and followed in the matter of admissions to Medical Colleges. The minimum qualifying marks even in cases of reserved category applicants also must be such as would meet the requirements of the dominant object.

13. Question arises, is it for the State Government to lay down minimum standards of proficiency or for this Court. This Court is certainly not competent to lay down the level of proficiency, but it is certainly open to this Court to see that the State has considered and taken note of relevant considerations in the matter of fixing minimum qualifying marks.It was incumbent upon the State to bring materials on record indicating that 35% qualifying marks for Scheduled Castes and Scheduled Tribes would also foot the bill in the matter of admission to Medical Colleges. No such material has been produced by the State before us. We do not know by what processes the State Government fixed obtaining of 35 % marks as satisfactory for Scheduled Castes and Tribes candidates. The bureaucrats and politicians are least suited to give a verdict in this behalf. The most competent persons to lay down standards in regard to medical education and in regard to selection of students can only be a team of Medical Experts. The Medical Council of India made some recommendations in regard to selection of students for admission to the Medical Colleges. It recommended as follows:--

"II. Selection of Students.

The selection of students to a medical college should be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:--

(a) In State, having only one Medical college and one University/Board/ Examining Body conducting the qualifying examination, the marks obtained at such qualifying examination be taken into consideration.

(b) In States, having more than one University/Board/Examining body conducting the qualifying examination (or where there are more than one medical college under the administrative control

of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation due to the variation in the standard qualifying examinations conducted by different agencies.

(c) Where there are more than one college in a State and only one University/Board conducting the qualifying examination then a joint selection board be constituted for all the colleges.

(d) A competitive entrance examination is absolutely necessary in the case of institutions of all India character.

(e) To be eligible for competitive entrance examination candidates must have passed any of the qualifying examinations as enumerated under the head-note "Admission to Medical Course".

Provided that a candidate who has appeared in a qualifying examination, the result of which has not been declared, may be provisionally allowed to take up the competitive entrance examination and in case of his selection for admission to medical course, he shall not be admitted thereto unless in the meanwhile he has passed the qualifying examination:Provided also that a candidate for admission to the medical course must have obtained not less than 50% of the total marks in science subjects taken together (i) at the qualifying examination or at a higher examination in the case of medical colleges where the admissions are made on the basis of marks obtained at these examinations or (ii) 50% of the total marks in science subjects taken together at the competitive entrance examination where such examinations are held for selection:Provided that a candidate belonging to the Scheduled Caste or Scheduled Tribes may be given relaxation of 5% the minimum marks required for admission.The authorities (State Govts. and Universities) should arrange special coaching classes for Scheduled Castes/ Scheduled Tribes candidates before the qualifying competitive examination to enable them to come up to the proper standard for admission to the Medical course.

(f) Weightage on a graded scale may be given for N. C. C. training and for participation in sports/athletics during the course of training for the qualifying examination.Note -- A total of up to 5% weightage can be given for category above to candidates who are otherwise eligible for admission to the medical course on the basis of marks secured in the qualifying examination." It will be seen from the above that the body of wise men in the matter of medical education were cognisant of the requirement of making relaxation in the matter of admission of Scheduled Castes and Scheduled Tribes and, therefore, a relaxation of 5% in the minimum marks required for admission was recommended. These recommendations may not have statutory force and yet it cannot be denied that that is the view of persons, who can be called experts in the matter of medical education. They are deliberations of persons eminent in their field and are eminently suited to give a verdict in regard to the minimum standard of proficiency required of Scheduled

Caste and Scheduled Tribe candidates. The State Government also in the prospectus issued (Annexure 1) laid down the same conditions as recommended by the Indian Medical Council. If the State Government had fixed 35 % as the minimum qualifying marks on the basis of technical advice of experts in the field of medicines, the relaxation could have carried some sense, but no step was taken in this behalf by the State Government. No reason has been assigned in Annexure-3 for taking the extraordinary step of reducing, the minimum qualifying marks for Scheduled Castes and Scheduled Tribes candidates from 45% to 40%. Annexure 4 makes matters worse. The rationale for reducing the minimum qualifying marks from 45% to 35% mentioned therein is that seats reserved for Scheduled Castes and Scheduled Tribes would remain unfilled if the qualifying marks were pegged at 40%. It is thus obvious the downgrading of minimum proficiency marks was done on extraneous considerations. The ground mentioned in Annexure 4 for the drastic reduction was not germane to the dominant object. In the absence of any expert body's opinion that students securing 35 % qualifying marks could also pass out as doctors much less who could be useful to society, it is difficult to hold that the State Government acted upon an intelligible rationale in the matter of obtaining the objectives of finding out the most suitable candidates for turning out doctors consistent with the advancements of socially and educationally backward classes. The reduction of qualifying marks to 35% has no relevance to the primary object of securing the best possible candidates consistent with the objective of making provision for the advancement of Scheduled Castes and Scheduled Tribes. The reductions certainly seek to confer certain privileges upon Scheduled Castes and Scheduled Tribes, but it completely ignores the other intelligible differentia of securing a minimum standard of efficiency. Such a step severely militates against the guarantee provided in Article 15 (1) of the Constitution. Clause (4) of Article 15 being an exception to Clause (1), it cannot be extended so as in effect to destroy the guarantee of Clause (1). That is what was observed in the case of P. Sagar (Supra). If the offending parts of Annexures 3 and 4 are permitted to retain their existence, the right of equality guaranteed to the petitioner by Article 15 (1) will be rendered completely nugatory.

14. Article 46 of the Constitution on which reliance was placed by learned Additional Advocate General can be of no assistance. Article 46 only enjoins promotion with special care of the educational and economic interests of the weaker sections of the people, in particular, of Scheduled Castes and the Scheduled Tribes. It does not enjoin upon the State to sacrifice the Indian society as a whole for promoting the educational and economic interests of Scheduled Tribes and Scheduled Castes. Article 46 does not ignore the minimum primary need of our society. The conclusion is, therefore, inescapable that the minimum qualifying marks laid down in Annexures 3 and 4 in regard to Scheduled Castes and Scheduled Tribes is arbitrary, not being based on any relevant consideration. They must, therefore, be struck down.

15. Before parting with the question relating to fixation of minimum qualifying marks, it is

essential to take note of a submission urged on behalf of the State. It was urged by the learned Additional Advocate General that the Supreme Court had permitted reservation up to 50%. The State Government had fixed 45% as the minimum qualifying marks for Scheduled Castes and Scheduled Tribes. 50% of that minimum qualifying marks would be 22.5%. Therefore, it was open to the State Government to fix the minimum qualifying marks for Scheduled Castes and Scheduled Tribes even at 22.5% of the total marks. Thus the fixation of 35% marks was not contrary to the dicta of the Supreme Court. This submission cannot be taken seriously. The 50% laid down by the Supreme Court was in regard to reservation and not in regard to relaxation of minimum qualifying standard. The submission urged in this behalf has, therefore, only to be stated to be rejected.

16. As stated earlier, the learned Additional Advocate General also submitted that even if the seats declared to be reserved by Annexure 1 were not filled by Scheduled Castes and Scheduled Tribes candidates, the State Government could not be compelled to release them for being filled by open or general category candidates. Reliance was placed in this behalf on Ku. Chitra Ghosh v. Union of India (AIR 1970 SC 35) where it was observed in para 12 that the Central Government was under no obligation to release the reserved seats to the general category of students. The observations of the Supreme Court in Ku. Chitra Ghosh's case (Supra) decided on a different set of circumstances, can be of no avail to the State. In the instant case, the State Government categorically and expressly took a decision that the unfilled reserved seats would be filled by candidates in the general category. This decision is incorporated in Annexure-2 and has not been cancelled or withdrawn. On the contrary it has been reinforced in Annexure 4 in paragraph 4. It is, therefore, idle to contend that the State Government cannot be compelled to release unfilled reserved seats to be filled by general category candidates. The reliance on the observation of the Supreme Court in Ku. Chitra Ghosh's case (Supra) is, therefore, misconceived. In the instant case, it is the accepted policy of the State Government that unfilled seats would be filled by general category students. Not to follow such a policy would be mischievous and anti people. Throwing them open to be filled up by general category candidates would be consistent with the larger interest of the society. This submission urged by the learned Additional Advocate General, therefore, must be rejected as unsound. There is no question of compelling Government to grant concession. It is the case of compelling Government to act according to the policy laid down by itself which has clothed the petitioner with certain expectations.

17. Lastly, the learned Additional Advocate General contended that relaxation in minimum qualifying marks had been done by Annexures 3 and 4 in the matter of Scheduled Castes and Scheduled Tribes. It did not affect the petitioner adversely and, therefore, he could not make a grievance of the relaxation. This submission ignores the prospect of the petitioner being admitted to a reserved seats remaining unfilled. Although he had secured 72.5% marks he has no chance

of being admitted if annexures 3 and 4 continue to hold the field. The relaxations, therefore, vitally affect the chances, and thus the civil right of the petitioner being, admitted to any of the several Medical Colleges.

18. Having considered all aspects of the matter, I am of the view that Annexures 3 and 4 in so far as they have arbitrarily reduced the minimum qualifying standards in regard to Scheduled Castes and Scheduled Tribes are violative of Article 15 (1) read with Article 14 of the Constitution. Such a course cannot be protected by the provisions of Article 15 (4) or Article 46 of the Constitution. They must, therefore, be struck down in so far as they prescribe 40% and 35% as the minimum qualifying marks for admission to Medical Colleges.

19. Learned counsel for the petitioner attempted to challenge the creation of five extra seats in Patna Medical College, Darbhanga Medical College, Ranchi Medical College and Jamshedpur Medical College for such candidates, as had suffered in agitation (which probably refers to the agitation from 1974 to 1977). It was submitted that there was no rationale for reserving seats for candidates, who had taken part in the agitation during the emergency loosely known as 'J.P. Movement'. This aspect of the matter may be vulnerable to serious attack, but it has not been challenged in this writ application. Not a word has been mentioned, challenging reservation of 20 seats in the four medical institutions for sufferers during the agitation of 1974 to 1977. I, therefore, do not consider it necessary to consider this aspect of the matter. I would leave this matter open for being decided in a properly constituted application at any subsequent stage.

20. After the hearing had concluded on 17-4-1979, we had passed an order partially allowing this application. The above are the reasons for the order passed by us.

21. For the reasons, stated above, the application is allowed in part. Annexures-3 and 4 issued by the Additional Director, Health Services and Special Secretary (Health), Shri B.K. Dubey, respectively reducing the minimum qualifying marks for Scheduled Castes and Scheduled Tribes are hereby quashed. The authorities will now be free to admit students to Medical Colleges in accordance with Annexure-1. In the circumstances of the case, there will be no order as to costs.

S.K. Jha, J.

22. On 17th April 1979 when the hearing was concluded in the Court, we had cordially and unanimously arrived at the conclusion that the orders as contained in annexure 3 lowering down the minimum qualifying marks from 45 to 40 per cent, in case of Scheduled Castes/Tribes candidates and in annexure 4 further lowering down the minimum qualifying marks in their case from 40% to 35% were unconstitutional and invalid. Accordingly we had pronounced the operative part of the judgment in open Court on that very date striking down the validity of, and

quashing, the orders of the relevant respondents as contained in annexures 3 and 4. We had accordingly allowed the writ application to that limited extent and had said that reasons shall follow.

23. The reasons have been set out in the judgments of my learned brethren Uday Sinha and Birendra Prasad Sinha, JJ., whose judgments I have had the advantage of reading I fully concur in what has been said specially by Uday Sinha, J., in his judgment.

24. (The simultaneous operation of Clauses (1) and (4) of Article 15 in the light of the provisions of Articles 14, 29 and 46 of the Constitution of India should not and was indeed not contemplated to lead to serious friction. No one can doubt the laudable object and wisdom of our Constitution makers in engrafting the provisions of Article 15 (4) as an exception to the general rule of non-discrimination as laid down in Article 15 (1) read with Article 14 of the Constitution. No one can deny that the necessity of the society as a whole is served by promoting the advancement of the weaker elements contemplated in Article 15 (4). Yet no one can deny that it would be highly unreasonable to assume that in engrafting Article 15 (4) the Constitution makers intended to provide that where the advancement of the socially and educationally backward classes and the members of the Scheduled Castes and Tribes was concerned, the fundamental rights of citizens constituting the rest of the society should be completely and absolutely ignored. The interest of weaker sections of the society, which, it has been well said, is a first charge on the States and Centre has to be adjusted with the interest of the community as a whole. This 'contemporaneity of the non-contemporaneous' elements in our social set up, as the sociologists would call it, impels me to say a few words of my own.)

25. Although the realisation of these non-contemporaneous elements in social life by the framers of our Constitution propelled them to incorporate such provisions in our Constitution in many spheres of social and intellectual life with very little friction contemplated, there may still be situations in which the application of the constitutional protective or enabling provisions, such as Article 15 (4), to these non-contemporaneous elements may lead to a catastrophe. (The instant case is but an instance of the executive branch of the State Government wielding the weapon of this protective or enabling provision in the guise of making available the so-called adequate opportunity for the well-merited socially and educationally backward classes, Scheduled Castes, Tribes candidate, for admission to the higher medical education courses in the institutions of the State at the peril of the national health and hygiene.)

26. (Neither the nature nor the function of a planned social system demands the sacrifice of the real liberties of the community as a whole. Realism prevents one from prophesying a Utopian future. It must, however, be said in all seriousness that there is only a chance that States with deep-rooted democratic traditions will be enthusiastic enough to revitalise their historical

experiences to meet the new situation. And, if we are to direct the social forces effectively, we must not remain absorbed in the continued pursuit of short-run interests. The only serious attack in the instant case was directed to the unconstitutionality and invalidity of the impugned portions of the orders as contained in annexures 3 and 4, by which the minimum qualifying marks in the case of Scheduled Castes/Tribes candidates were first reduced from 45% to 40% (by annexure 3) and then further down to 35% (by annexure 4). As can be gathered from the judgments of my learned brethren, the minimum qualifying marks to be obtained by the so-called general category candidates at the competitive tests to be held for admission to medical courses in the medical institutions of the State was laid down at 50 per cent while a relaxation of 5 per cent was prescribed for candidates belonging to Scheduled Castes and Scheduled Tribes. In other words, where the minimum qualifying marks for admission in the case of general candidates to these medical courses was fixed at 50 per cent in combined competitive examinations to be held for the purpose, 45 per cent as the minimum qualifying marks was felt sufficient for the protection or development of the weaker sections like Scheduled Castes/Tribes candidates. This was in consonance with the recommendations of that expert body of medical professionals who constitute the Medical Council of India. I am not much concerned about the statutory force or effect of such recommendations. It is sufficient for me to take it that keeping in view the development, advancement and protection of the Scheduled Castes and Scheduled Tribes candidates a maximum relaxation of 5 per cent in the minimum qualifying marks for admission to this specialised and higher technical education was all that was recommended. Such a recommendation was accepted by the State Government while issuing the prospectus in the instant academic session as also in the numerous preceding academic sessions inviting applications for admission to such institutions imparting medical education. As has also been noticed in the judgment of my learned brother Uday Sinha, J. even such a relaxation in the recommendation of the expert body was conditioned by special coaching arrangements for weaker elements so as to bring them up to the minimum standard of proficiency required of an ordinary and average medical student. It may equally well have been noticed that although on paper 50 per cent was fixed as minimum qualifying marks for general category candidates, such candidates have never, so far, as was admitted on all hands in course of argument, been inducted into the folds of the medical students who had, at any point of time, secured less than 70 per cent of the total marks. A glaring instance is that of the petitioner in the instant case who having secured 72.5 per cent marks at the competitive examination is still lying in the lurch for being admitted against the vacancies to remain unfilled up out of the seats reserved for the weaker sections as contemplated by Article 15 (4). I do not concern myself with the argument of the learned Additional Advocate-General in this case that the Court could not and should not compel the Government to admit general category candidates against the unfilled up seats reserved for the weaker sections. That question is wholly academic in so far as the present case is concerned

because admittedly for long before the academic session with which we are concerned the State Government expressly proclaimed and has been adhering, even till this date, to its decision that any unfilled up seats reserved for the weaker section shall be available for distribution amongst the meritorious candidates of the general category. Such an express decision of the State Government finds support from the order/direction as contained in annexure 2 as also the latest direction as contained in the impugned annexure 4. We are, therefore, not haunted in the present case by any impression of what may result in a glut of non-deserving weaker sections filling up these reserved seats by their being carried over from year to year. Suffice it to say, then, that the question posed before us has to be judged purely in the light of reasonableness of the reduction of the minimum qualifying marks in the case of Scheduled Castes/Tribes candidates from 45 per cent as initially prescribed to its being scaled down to 40 per cent and subsequently to 35 per cent. Indeed, the learned Additional Advocate-General contended that even if the State Government or the competent authorities choose in their discretion to reduce or scale down such minimum qualifying marks even up to 221/2 per cent, it would still remain protected as it would be in conformity with the reservation for such weaker section to the extent of 50 per cent of the total seats available as has been approved by some of the decisions of the Supreme Court. This argument has well been noticed in the judgments of my learned brethren to be merely rejected.

27. No one doubts that the provisions of Article 15 (4) having been engrafted as an exception to the general constitutional requirement of Article 15 (1) must satisfy the test in any given case of reasonableness -- a rationale to be accepted by the civilized society on the basis of an intelligible and reasonable differentia. The rules for selection for the purpose of admission which the authorities can make must have a reasonable nexus with the object in view. That is the settled law and an unexceptionable view. When a law or a State action is challenged as offending against the equal guarantee clauses in the Constitution, the first duty of the Court is to examine the purpose of the policy of the law and the action impunged and then to discover whether the policy behind the law or the action has a reasonable relation to the object which is sought to be obtained within the purview of the exceptional clauses in Article 15. No one has argued and indeed could not argue that being an exception to Clause (1) of Article 15, Clause (4) thereof can be extended so as, in effect, to destroy or nullify the guarantee in Clause (1). Article 15 (4) is an enabling provision. In making reservation for socially and educationally backward classes, the Scheduled Castes and the Scheduled Tribes, the State cannot ignore the fundamental rights of the rest of the citizens, A reasonable balance has to be struck between several relevant considerations and the reasonableness must stand the test of objectivity. For making the special provisions for the weaker sections for admission in higher and technical education, the State cannot be presumed to be protected by a constitutional provision like Article 15 (4) to weaken the standards of education or to lower the efficiency for scholars to the detriment of the national interests. In respect of Scheduled Castes and Scheduled Tribes candidates the reduction in the instant case of prescribed

standard of eligibility for admission to medical colleges from 45 per cent to 35 per cent only on the ground, as it is said in the impugned annexures, that adherence to the 45 per cent of the qualifying mark will not be able to fill up a large number of reserved seats, needs no persuasion to hold it violative of Articles 14 and 15 (1). Can it be said or contemplated that the State executive machinery is empowered to say that that in case of weaker sections no minimum qualifying mark is necessary? Indeed the learned Additional Advocate-General has contended that such an action or decision cannot by any stretch of imagination, be protected. He even went up to the extent of conceding that anything less than 221/2 per cent of the minimum qualifying marks in the case of weaker section would be violative of the guarantee enshrined in Articles 15 (1) and 14 of the Constitution. I must confess that it is not the duty of the Courts to fix any minimum qualifying marks but the duty of the Court certainly is to test objectively as to whether the criterion laid down for the protection of the interest of the weaker sections is reasonable and commensurate with the object to be achieved, namely, of imparting higher and technical education. What would be the minimum standard expected of such weaker sections is within the domain of experts in that particular profession. That the Medical Council of India is such an expert body is accepted by the learned Additional Advocate-General. It is also established that the recommendation of a maximum relaxation of 5 per cent in the minimum qualifying marks in the case of Scheduled Castes/Tribes candidates was recommended by the Medical Council of India and was accepted as valid recommendation by the State Government when the prospectus was issued not only for this academic session but also from year to year ever since the combined competitive test began to be held for admission into medical colleges. It is obvious then that the reduction of such minimum qualifying mark in their case merely on the ground that the seats reserved for them would remain unfilled up is wholly irrational with no object to be achieved, much less any rational one. If, on the one hand, it is the policy of the State Government to throw open the unfilled up seats from out of the reserved quota to the general category candidates who are certainly more meritorious or much more meritorious and, on the other hand, if the same policy-makers were to say that the qualifying marks would be so reduced as to see that the minimum possible reserved seats, if at all, are thrown open to the general candidates, it would not only be playing loose and fast upon its own declared policy but would also amount to levelling down the minimum proficiency required of such candidates of the weaker section to ridiculous farce. The impugned reduction in annexures 3 and 4 not having stood the test of reasonableness and being held in effect to render nugatory for all practical purposes the provisions of Article 15 (1) must be struck down without further detaining us on the question as to whether any admission of such candidates of weaker sections to the medical institutions would result not only in a glut of such unsuccessful candidates either in one or the other year of the medical courses stultifying the growth and development of imparting medical education for the betterment of the life and hygiene of citizens of the country as a whole. Such a sacrifice of the national interest, if it were

held to be protected by the provisions of Article 15 (4), would be simply denying the citizens of the State as a whole their right to live a healthy life and to secure immunity from diseases and protection against and cure of illness. An objective appreciation of this facet of higher and technical education for the weaker sections on the part of the policy-makers should be the least that is required of them.

Birendra Prasad Sinha, J.

28. The question which has sharply come to the focus in the present case is whether it is permissible to make any reservation for admission into the medical colleges in favour of Scheduled Castes and Scheduled Tribes at the cost of merit. It was submitted by the learned Additional Advocate-General that if fifty per cent of the seats can be reserved in favour of these classes, it should also be permissible to admit students belonging to these classes having at least fifty per cent less merit than others.

29. Before proceeding to consider the matter, the first question that arises is: What is the object of medical education? Is it to produce medicos-physicians and surgeons, or to produce medicasters-quacks? Answer to this question will determine whether or not it should be permissible to admit students of sub-standard merit in medical colleges without offending the guarantees under Article 14 of the Constitution. It must be remembered that the main purpose of admission to a medical college is to impart education in the theory and practice of medicine and the object of selection for admission is to secure the best possible material. This can be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the source that are intended to supply the material.

30. The question regarding reservation of seats for admission into the medical colleges has very frequently come up for consideration before the apex court of India. In the leading case of M.R. Balaji v. The State of Mysore (AIR 1963 SC 649), it was held that, broadly speaking, less than fifty per cent of the seats could be reserved. When the State was making a special provision for the advancement of the weaker sections of society specified in Article 15 (4) of the Constitution, it has to approach its task objectively and in a rational manner. But to say that while making reservation of fifty per cent seats for the weaker sections it is also permissible to admit students belonging to those classes who have lesser merit, would amount to putting a premium on the inefficiency and would be wholly against national interest.

31. Medical education is devoted to teaching the knowledge and skills used in the prevention and treatment of disease and to developing the methods and objectives appropriate to the study of the still unknown factors that produce disease or favour well-being. A peep into the history will show that the first rational and scientific system of medicine apart from Ayurvedic system, is of Greek

origin and is usually associated with the name of Hippocrates. The transition from magic to science was a gradual process that lasted for centuries. The Iliad and the Odyssey narrate tales of narrow distinction between gods and men who performed many miracles of healing. In the eighteenth century in Europe medical education began slowly to assume its modern character in the application of a gradually increasing knowledge of natural science to the actual care of patients. The distinctive feature of medical education is the thoroughness with what experience teaches in the practical responsibility of taking care of human beings. The double burden of theory and practice is all the more heavier when great advances are made in the medical science. Medical education is a form of education and not a mysterious process of professional initiation or apprenticeship. It has the double task of passing on the students what is known and of attacking what is still unknown, The cost of research is borne by a few, the benefits are shared by many. In all the advanced countries of the world, therefore, great emphasis is laid on admitting meritorious students to the medical colleges. A poor country like ours has to spend large sums of money, over the education of medical student than any other faculty. The nation requires good and qualified doctors who can take care of the health of the people on which largely depends its progress. Merit of a student, therefore, at the initial stage assumes great importance. Article 15 (4) of the Constitution, therefore, does not contemplate that any relaxation can be made in favour of students with lesser merit. If that could be permissible then it would be safely claimed that the standard for passing out the medical examinations as also the minimum number of qualifying marks should also be different for students belonging to Scheduled Castes and Scheduled Tribes. This obviously will be repugnant to the right guaranteed under Article 14 of the Constitution. It is better to produce a fewer number of good physicians and surgeons than to produce a large number of medicasters. With the sub-standardized merit of students the country cannot afford to produce good physicians and able surgeons.

32. Dealing with a similar question, Gajendragadkar, J. (as he then was), in General Manager, Southern Railway v. Rangachari (AIR 1962 SC 36), observed that in providing for reservation for all appointments or posts under Article 16 (4), the State has to take into consideration the claims of the members of the Backward Classes consistently with the maintenance of efficiency of administration. He further observed that it must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. What is true in regard to Article 16 (4) is equally true in regard to Article 15 (4). In the case of M. R. Balaji (supra) the same learned Judge observed:

"There can be no doubt that the Constitution makers assumed, as they were entitled to, that while making adequate reservation under Article 16 (4) care would be taken not to provide for unreasonable, excessive or extravagant reservation, for, that would be eliminating general

competition in a large field and by creating widespread dissatisfaction among the employees materially affect the efficiency".

This was reiterated in C.A. Rajendran v. Union of India (AIR 1968 SC 507), where Ramaswami, J. stated that in making a provision for reservation the Government has to take into consideration not only the claims of the members of the Backward Classes and others but also the maintenance of efficiency which is a matter of paramount importance. In State of Andhra Pradesh v. P. Sagar (AIR 1968 SC 1379), Shah, J. (as he then was) stated that reservation may be adopted to advance the interest of weaker sections of society, but in doing so care must be taken to see that deserving and qualified candidates are not excluded from admission to higher educational institutions.

33. Previously, admissions to the medical colleges used to be taken on the basis of marks obtained by the candidates at the I. Sc. examination held by the University. Later, the State Government decided to hold a combined competitive test examination of all the intending candidates for admission in the different medical colleges and for that purpose a prospectus was issued setting out the criteria and rules for selection. The prospectus for the year 1978-79 is contained in Annexure 1. It, inter alia, states that the candidates shall have to appear at a competitive test and will be selected on the basis of merit according to the result of the test. They should secure at least fifty percent marks but in case of Scheduled Castes and Scheduled Tribes they should secure forty-five per cent at the competitive test to qualify for the admission. It further states that the candidates will be selected for admission strictly on the basis of merit as mentioned above subject to the reservation of seats as per Government rules. This indicates that already certain concession has been granted in favour of the Scheduled Castes and Scheduled Tribes even in the matter of merit. It is conceivable that reservation may mean some impairment of efficiency but the risk involved in it has to be borne in mind when the State sets about making a provision for reservation. Reservation is merely intended to give adequate representation to those communities but it can never be used for creating monopoly or for unduly or illegitimately disturbing the legitimate interest of other classes. In the case of General Manager, Southern Railway (supra) it was observed in relation to Article 16 (4) that the problem of adequate representation of the Backward Class of citizens must always be made to strike a reasonable balance between the claims of Backward Classes and the claims of other employees as well as the important consideration of efficiency of administration. Article 15 (4) is an exception to Clause (1) and cannot be extended so as in effect to destroy the guarantee under Clause (1). As stated in the case of State of Andhra Pradesh v. P. Sagar (supra) the Parliament by enacting Clause (4) has attempted a balance as against the right of equality of citizens and the special necessities of the weaker sections of the people by allowing a provision to be made for their advancement. This never means that Clause (4) will totally destroy Clause (1) of Article 15. Let us see the position obtaining in this case. The petitioner obtained more than 72 per cent marks at

the competitive test. The competition being so stiff amongst the general class of students that the petitioner may not have a chance to get admission even though he got marks much above the minimum required for being considered in that group. On the other hand, the qualifying marks for Scheduled Castes and Scheduled Tribes candidates is only forty-five per cent, i.e. five per cent less than the general group. One can understand that in giving representation to the weaker section claims of meritorious students could be sacrificed to a certain extent but a departure even from this rule will be doing a great injustice to other classes apart from being harmful to the national interests. It is here that the guarantees provided by Article 15 (1) will be in serious jeopardy.

34. The Indian Medical Council Act, 1956 (Act 102 of 1956) was enacted to provide for reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith. It, inter alia, provides for the constitution and composition of a Council composed of experts in the field. Certain Universities or medical institutions in India are recognized by the Council and the medical qualifications granted by such Universities or medical institutions are recognised as medical qualifications for the purposes of the Act. The medical qualifications from such universities or institutions are sufficient qualifications for enrolment on any State Medical Register maintained for regulating the practitioners of medicine. Under Section 16, every University or medical institution in India which grants a recognised medical qualification is required to furnish such information as the Council may require as to the courses of study and examinations to be undergone in order to obtain such qualification and other matters connected therewith. Under Section 17, the Council appoints medical inspectors who may attend all or any of the examinations held by the medical institutions for the purpose of recommending to the Central Government recognition of medical qualifications. The Council may also appoint visitors. Section 19 provides that the Council can make representation to the Central Government on receipt of report from the committee or the visitors that the courses of study and examinations to be undergone in any medical institution in India in order to obtain a recognised medical qualification or that the standards of proficiency required from candidates at any examination held for the purpose of granting such qualification are not such as to secure to persons holding such qualification the knowledge and skill requisite for the efficient practice of medicine. The council may direct the removal of the name of any person from the Indian Medical Register. The privilege of the person who is enrolled on the Indian Medical Register is that he is entitled according to his qualification to practise as a medical practitioner in any part of India. Section 32 of the Act empowers the Central Government to make rules to carry out the purposes of the Act. Section 33 provides that the Council may, with the previous sanction of the Central Government, make regulations gene rally to carry out the purposes of the Act. The Medical Council of India adopted certain recommendations on under-graduate medical education which have been approved as regulations

under the Act. These regulations provide inter alia that the selection of students to a medical college should be based solely on merit of the students and for determination of merit certain criteria has been adopted uniformly throughout the country. It further provides that a competitive entrance examination is absolutely necessary in the case of such institutions. A candidate for admission to the medical course must obtain not less than fifty per cent of the total marks in science subjects taken altogether at the qualifying examination or fifty per cent of the total marks in science subject taken together at the competitive entrance examination where such examination are held for selection. A candidate belonging to the Scheduled Castes or Scheduled Tribes may be given relaxation of five per cent in the mini mum marks required for admission.

However, in such cases the authorities should arrange special coaching classes for the Scheduled Castes and Scheduled Tribes candidates before the qualifying/competitive examination to enable them to come up to the proper standard for admission to the medical course. This shows that the emphasis is on 'merit' so that a proper standard is maintained. But, at the same time, care is taken for the Scheduled Castes and Scheduled Tribes candidates, who on account of their backwardness, may not be completely eliminated from admission. The provisions contained in these regulations have been adopted in the prospectus of the Universities in Bihar (Annexure 1.) The Medical Council of India is the expert body and can determine as to what should be the proper method for selection of candidates for admission as also what should be the minimum standard for medical education. An expert body being of this opinion, it should not be open to the State to change the method of selection or to affect the standard of education by mere executive fiats. The danger inherent is that if the standard of medical education is interfered with in this manner and ultimately affected, the Medical Council of India may withdraw the recognition of the medical institution concerned which would not only affect a large number of meritorious students but also the people of the State in general. Having given my anxious consideration to the facts and circumstances of this case. I am definitely of the view that the minimum qualifying marks cannot be further reduced from fortyfive per cent in case of Scheduled Castes and Scheduled Tribes candidates. Annexures 3 and 4, therefore, have got to be quashed to that extent.

35. On the question as to whether twenty per cent seats meant for girl students is merely an allocation or a classification of course or is a case of reservation, I had held in C.W.J.C. No. 1753 of 1977 and analogous cases : (AIR 1979 Pat 266) (FB) that it is a case of reservation and not merely classification of source. Having found that twenty per cent seats for the girl students is a case of reservation, I had further held that the total reservation including those meant for Scheduled Castes (14 per cent), Scheduled Tribes (9 per cent) and Backward Classes (10 per cent) came to 53 per cent and was, therefore, destructive of the provisions of the Constitution and was ultra vires. Annexure 1, the prospectus, in the present case, was under challenge in that case also before a Bench of five Judges. The Bench of five Judges has really been constituted in view

of Article 228A which has now been repealed. With great respect to my learned Brothers, I still hold the view that there is a reservation of 53 per cent for the various categories even now and the 20 per cent seats ear-marked for ladies is also a case of reservation and not classification of source. In paragraph 23 of the writ application, it has been submitted that the total reservation has far exceeded the limit of fifty per cent and the same is illegal and unconstitutional. In paragraph 16 of the counter-affidavit, it has been merely stated that the statements made in paragraph 23 are vague and the general argument of the ban over fifty per cent reservation has no application to the facts of the case inasmuch as there is no such reservation in this particular case. In paragraph 8 of the prospectus, it has been stated that reservation of seats for admission in different medical colleges in Bihar will be as follows : Scheduled Castes 14, Scheduled Tribes 9, Backward Classes 10, total 33 per cent. Thereafter it has been stated that in view of the requirement of the lady doctors 20 per cent of the seats will be ear-marked for ladies. The calculation for the above reservation and ear-marked seats will be done, after deducting seats already reserved for Government of India nominees, self-financed Nepalese students, TISCO, Sri Lakshmi Narayan Trust and Coal Mines Welfare Organisation etc. In Annexure 3, which is a letter dated 8-1-79, from the Additional Director, Health Services, Bihar, to the principal, Bhagalpur Medical College, who is convener, the figure of reservation has been given. It reads as under :

This indicates that 20 per cent has been separately given for girl students. The total percentage of seats meant for Scheduled Castes, Scheduled Tribes, Backward Classes and girls come to 53 per cent The most significant part of it is that 47 per cent has been left out for the general categories. If 20 per cent ear-marked for girl students is only a case of allocation, that could have been set apart like the other cultural seats meant for the self-financed Nepalese students and others, After deducting 20 per cent meant of girl students and the number of seats meant for self-financing Nepalese students and others, the left over seats could be distributed among the general categories and the Scheduled Castes and Scheduled Tribes and Backward Classes. If the 20 per cent seats is allotted to girl students then the total percentage for Scheduled Castes, Scheduled Tribes, Backward Classes and the general categories will only come to 80 per cent. Therefore, according to the Government's decision, as contained in Annexure 3, fiftythree per cent seats have been reserved which is not constitutionally permissible. However, in view of the majority decision of the Full Bench in CWJC. No. 1753 of 1977, I refrain from passing any order in respect of this question.

36. The next question relates to creation of five extra seats in each of the medical colleges for such candidates had suffered in the agitation from 1974 to 1977. I agree with my learned brother Uday Sinha, J. that this matter is vulnerable to serious attack but since it has not been challenged in the present writ application, it is not necessary to consider this aspects of the matter.

Cases Referred.

1 A.I.R 1951 SC 226
2 A.I.R 1963 SC 649
3 A.I.R.1972 SC 1375
4AIR 1968 SC 1012
5 A.I.R 1968 SC 1379
6(AIR 1970 SC 35)