RAJASTHAN HIGH COURT

Surendrakumar

Vs.

State of Rajasthan

Civil Writ Petns. Nos.751, 753, 775 and 758 of 1968
(L.S. Mehta And C.M. Lodha, JJ.)

31.10.1968

JUDGMENT

Lodha, J.

1. By these writ petitions, the petitioners have challenged reservation of certain seats made by the Government of Rajasthan in the Medical Colleges run by it in the State. The petitioners have also challenged the notification No. F.5(1)ME/68 dated 30th August, 1968, (Exhibit 3) by which the Government of Rajasthan raised the upper age limit for admission to Medical Colleges in Rajasthan from 21 years to 22 years. Since all these writ petitions raise identical questions, we consider it convenient to dispose them of by a single judgment.

2. All the petitioners passed the First Year of the Three Years Degree Course (Science) Examination in the year 1968 and applied for admission to the various Medical Colleges of Rajasthan for the session commencing from July 1968. It may be stated here that there are five Medical Colleges in the State of Rajasthan run by the Government, and they are located at Jaipur, Bikaner, Udaipur, Jodhpur and Ajmer and all of them are affiliated to the University of Rajasthan. The last date for submission of applications for admission to the M. B. B. S. Classes of the said Medical Colleges was 25th June, 1968 and all the petitioners submitted their applications in the prescribed form before this date. They were all called for interview but were not admitted and therefore they have filed these writ applications before this Court praying that the reservations of certain seats made by the Government of Rajasthan in respect of certain classes of persons and the notification issued by the Government relaxing the upper age limit from 21 years to 22 years be struck down and further a direction be issued to the Government and the Principals of various Colleges to

consider the applications of the petitioners for admission on the basis of merit after quashing the admissions of those candidates who have been admitted in pursuance of the reservations made by the Government and also in pursuance of the notification raising the upper age limit.

3. For a correct appraisal of the arguments advanced on behalf of the petitioners, it would be necessary to narrate in brief the circumstances in which reservations were made by the Government and the notification regarding raising the upper age limit was issued. It is common ground between the parties that each Medical College in Rajasthan had issued a prospectus containing conditions of admission and other ancillary matters. We have referred to the Prospectus for the year 1968-69 issued by Sawai Mansingh Medical College, Jaipur and it is urged that similar prospectuses were issued by other Colleges also. Part I of the Prospectus issued by Sawai Mansingh Medical College deals with conditions of admission. Para 3 of this Prospectus prescribes the order of preference in which the candidates will be admitted. It reads as follows:-

> "3. Admission of candidates will be made in the following order of preference :-
> (a) Candidates will be admitted in order of merit judged on the percentage of marks obtained either at the Intermediate Examination or the first year University Examination of the Three Years Degree Course or at the B. Sc. Examination whichever is more advantageous to the candidates provided that at the B. Sc. Examination marks in which the Division is awarded shall be considered.
> (b) (i) Candidates securing less than 45 per cent of the aggregate marks will not be eligible for admission to the College.
> (ii) Candidates passing in a supplementary examination shall not be eligible if they secure less than 48 per cent marks in aggregate.

The candidates, who have passed the 1st Year T. D. C. Examination in Supplementary and have been awarded a pass class at the Final Year T. D. C. (B. Sc.) Examination, are required to submit the marks-sheet of 1st Year T. D. C. (Main and Supplementary Examinations) together with the marks-sheet of final year T. D. C. Examination failing which their application will be rejected without making any reference.

> (c) Candidates eligible under clauses (a) and (b) above shall be called by the

Principal S. M. S. Medical College, Jaipur, to appear before the Admission Board constituted by the Government for interview. Bad stammerers and/or those found unsuitable by the Admission Board shall be rejected.

(d) The Government reserves the right to admit or reject admission of any candidate without showing any cause."

4. Para 4 (a) prescribes the age limit and lays down that candidates must have completed the age of 17 years at the time of admission or before 1st October of the year of admission and should not be more than 21 years age. Special provision has been made regarding candidates belonging to Scheduled Castes, and Scheduled Tribes of Rajasthan in the matter of age and the maximum age limit prescribed for them is 24 years at the time of admission. Similar special conditions have been prescribed in the case of Para-Medical Personnel, who are in service of the Government of Rajasthan but we do not consider it necessary to refer to them for the disposal of these writ petitions.

5. Para 2 of Part II of the Prospectus provides reservation of seats for different categories and the reservation is as below:-

(a) Two seats for foreign private students cultural scholars and private students of Indian Origin domiciled abroad.

(b) One seat for the student migrating from Burma.

(c) Three seats for candidates of Scheduled Castes and Scheduled Tribes belonging to the State of Rajasthan.

(d) Two seats are reserved for children of Defence Service personnel belonging to Rajasthan.

(e) Two seats for children of such a political sufferer who is or was a *bona fide* resident of Rajasthan and had been in Jail in any part of India.

6. There are similar reservations in other Medical Colleges in Rajasthan also, though with slight modifications both in the categories as well as in the number of seats. It may also be relevant here to state that initially the number of admissions were limited to 100 seats in Jaipur, Bikaner and Udaipur and 50 each in Jodhpur and Ajmer. Subsequently 50 seats were increased in the four Colleges at Bikaner, Udaipur, Jodhpur and Ajmer by an order of the Government dated 14-8-1968 thereby increasing the total seats by 200. Keeping in view the rush of admissions for Medical study, the

Rajasthan Government further increased 40 seats in the Jaipur College by its order dated 30th August, '68. By a subsequent notification dated 2-9-1968 which has been placed on record by the State of Rajasthan and marked Ex. R. 1 it was notified that there were in all 640 seats in the various Medical Colleges of Rajasthan as under :-

1	Jaipur	-	140
2	Bikaner	-	150
3	Udaipur	-	150
4	Ajmer	-	100
5	Jodhpur	-	100
			640

It was also specified in this notification that 40 seats had been reserved for the following categories :-

1	Candidates of Scheduled Castes and Scheduled Tribes	12
2	Children of Doctors, Vaidas, Hakims and para-medical Staff	10
3	Children of political sufferers	5
4	Children of Members of Parliament and Members of Legislative Assembly	5
5	Foreign students and students from other States	5
6	Students at the discretion of the State Government in special circumstances	3
		40

Before issuing this notification the Government of Rajasthan had issued two notifications No. F.5(1)ME/68 dated 30-8-1968 and No.F.5(1)ME/68 dated 30-8-1968.

The first notification provides for reservation of 40 seats as already mentioned above in connection with Ex. R.1. The other notification provides for relaxation of the upper age limit for admission to Medical Colleges in Rajasthan from 21 years to 22 years. Copies of these notifications have been placed on the record and marked Ex. 2 and Ex. 3 respectively. The petitioners have directed their attack not only against these two notifications Ex. 2 and Ex. 3 but also against the reservations made in the Prospectus in respect of certain categories.

7. At this stage it would be proper to give the number of total reservations as they exist to-day out of 640 seats :

1	For children of Defence Personnel.	32
2	For children of political sufferers.	15
3	For children of Scheduled Castes and Scheduled Tribes.	30
4	For children of para-medical staff.	10
5	For children of Members of Parliament and Legislative Assembly.	5
6	For Foreign students from other States.	5
7	For special cases in particular circumstances at the discretion of the Government.	3
8	Foreign students to be nominated by the Central Government.	6
9	Displaced persons from Burma	5
		111

(Out of the General Seats 20% are reserved for girl candidates, so also 20% for girls in reserved seats).

8. Mr. Narendra Mohan Kasliwal, learned counsel for the petitioner Surendra Kumar Bardar in writ petition No. 751 of 1968 has challenged the following reservations :-

1	Children of Doctors, Vaidas, Hakims and para-medical staff.	10
2	Children of political sufferers.	15
3	Children of Members of Parliament and Legislative Assembly.	5

He has also challenged the validity of the notification raising of the upper age limit from 21 years to 22 years.

9. Mr. Marudhar Mridul appearing for the petitioners in the rest of the three writ petitions while adopting all the arguments advanced by Mr. Narendra Mohan Kasliwal has further challenged the validity of following two more reservations :-

1	Children of Defence Personnel.
2	Seats at the discretion of the State Government in speci circumstances.

10. All the writ petitions were opposed by the State. The arguments in these cases commenced on 19-9-1968. During the course of arguments on 20-9-1968 an objection was raised by the learned Advocate-General that the relief asked for by the petitioners for setting aside the admissions of those candidates, who had been admitted under the reservation quota and in pursuance of the relaxation of the age limit cannot be considered unless those candidates were impleaded in the writ applications. Realising the force of objection the petitioners amended the writ petitions by impleading those candidates as respondents. All those candidates whose admissions have been challenged have been served and some of them are actually represented before us and they too have joined the State in opposing the writ applications. They have adopted the arguments advanced on behalf of the State by the learned Advocate-General.

11. We may now consider the objections raised by the petitioners with respect of the reservations for various categories in the same order in which they have been set out above. First we shall take up the reservations for the children of Doctors, Vaids, Hakims and para-medical staff. Learned Counsel for the petitioners have contended that there is no reasonable basis for making such a classification and such reservation is hit by Article 14 of the Constitution being unlawfully discriminatory. Reliance in

this connection is placed on *P. Rajendran v. State of Madras,* [1] *Umesh Chandra v. V. N. Singh,* [2] and *State of Kerala v. R. Jacob,* [3] The learned Advocate-General has, however, submitted that such a reservation has been made by the State to afford a reasonable facility for the children of persons in the medical profession.

The only point for our determination is whether this reservation can be justified on the ground of reasonable classification or is liable to be struck down as unlawfully discriminatory being violative of Article 14 of the Constitution? Before we embark on the consideration of this question it would be proper to note the rationale of the decisions which have been relied upon by the learned Counsel for the petitioners. In AIR 1968 SC 1012 district wise allocation of seats for selection of candidates for admission to the first year Integrated M. B. B. S. Course in the State of Madras was challenged before their Lordships of the Supreme Court on the ground that there was no nexus between classification and object to be achieved and therefore such a classification was violative of Article 14 of the Constitution. It was urged before their Lordships that district wise distribution violates Article 14 of the Constitution because it denies equality before the law and the equal protection of the laws inasmuch as such allocation of seats may result in candidates of inferior caliber being selected in one District while candidates of superior caliber cannot be selected in another District. This contention found favor with their Lordships, and it was observed,

> "The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district ..... It is true that Article 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges, the allocation of seats districtwise has no reasonable relation with the object to be

> achieved. If anything such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other district may be admitted from either of the two sources."

12. In AIR 1968 Patna 3, there was provision in the Ordinance which authorised giving of special preference in the matter of admission to the Patna Medical College to the children of the employees of the University, who had rendered meritorious service to the University, and it was argued that there was no rational nexus between securing of admission of candidates to the Medical College on the one hand and the conferring of special concession or benefit to meritorious services of members of the University on the other. The learned Judges of the Patna High Court accepted this contention and held that a provision like this which would lead to favoritism and patronage amounted to unlawful discrimination and was unreasonable.

13. The last case on which strong reliance has been placed by the learned Counsel for the petitioners is AIR 1964 Kerala 316. Here was a case in which two seats were reserved for admission of children of Registered Medical Practitioners in Modem Medicine of the State. This was held to be not a proper classification on the ground that the classification had no reasonable relation to the objects sought to be achieved. The object sought to be achieved, it was observed, is to get the best amongst the student population for admission into the professional colleges. It was held that

> "the classification itself cannot be said to be rational and had no reasonable relation to the object, namely that of admitting the best students in the professional colleges."

This is a case on the point and fully supports the contentions advanced on behalf of the petitioners.

We have given our due consideration to the arguments advanced from both the sides. It is not denied that the object of classification is to get the best material for training in medical profession. The only justification in respect of this reservation is the policy of the State to afford facility to the children of Doctors, Vaids, Hakims and para-medical-staff, who are engaged in the medical profession. We are clearly of the opinion that

this classification has been made to give concession to a class of people solely on the ground of profession and that in our view will amount to discrimination and will offend Article 14 of the Constitution. If the argument of the learned Advocate-General is accepted as correct, the State Government may as well say that some seats should be reserved for the children of a particular group of Government servants or Government servants generally as a matter of policy to afford facility to the Government servants. This is bound to lead in the very nature of things to a sort of patronage and favoritism which our Constitution does not afford. This sort of classification would not in any way advance the cause of medical study or would not contribute to the efficiency of the medical profession. The argument that the children of Doctors, Vaids and Hakims may prove to be more efficient, in view of the environment in their family is to be stated only to be rejected (sic). We are firmly of the opinion that this reservation of 10 seats for children of Doctors, Vaidas and Hakims and paramedical-staff is an unreasonable discrimination and must be struck down and we accordingly do so.

14. Then we come to the second item - reservation for children of political sufferers. In the reply filed on behalf of the State it has been submitted that it has been the policy not only of this State but also of all State Governments as well as of the Union Government to afford reasonable facilities to the persons who had been political sufferers during the Independence Movement of the country and who have made personal sacrifice. In the Prospectus to which we have referred above the reservation of two seats was made for children of such political sufferers who is or was a *bona fide* resident of Rajasthan and had been in jail in any part of India. The number of reserved seats against this category has been increased to 5. In the notification Ex. 2 no description of a political sufferer has been given. In the Prospectus the reservation was confined to the children of such political sufferer who was a *bona fide* resident of Rajasthan. If the object of the Government was to afford facilities to those political sufferers who had suffered during the Independence Movement, we do not see any reason why the benefit was restricted to *bona fide* residents of Rajasthan only. The word 'political sufferer" if we may say so is not a term of art and opinions may honestly differ as to what sacrifices would be sufficient to clothe a person with the status of a "political sufferer". Moreover the Independence Movement came to an end as far back as 1947 A. D. and 21 years have gone by since then. That apart as we have already observed above the object of the classification or reservation can only be to obtain the best material for medical profession and we fail to see how that object can

be achieved by this reservation.
We are fortified in this view of ours by the observations made in *Ramchandra v. State of Madhya Pradesh,*[4] relied upon by Mr. Narendra Mohan Kasliwal learned Counsel for the petitioners. It was observed in that case :

> "In regard to the seats reserved for the sons and daughters of political sufferers, it would appear that the preferential treatment accorded to them based upon irrelevant and wholly extraneous considerations because there is no rational relation between the political suffering of any person and the education imparted to his descendants in a Medical College with the object of promoting efficiency in the medical profession".

It was further observed by the learned Judges of the Madhya Pradesh High Court :-

> "After all "political suffering" however, commendable can be rewarded only once in an appropriate field. It cannot be exploited for securing benefits of all kinds whenever an occasion arises. If that happens, then the sacrifice involved in "political suffering" ceases to be a "sweet sacrifice" deserving any recognition."

Our conclusion therefore is that this reservation cannot be upheld and must be set aside being unreasonably discriminatory and violative of Article 14 of the Constitution.

15. Then we come to the reservation for the children of Members of Parliament and Legislative Assembly. The reply of the State on this point is that the Legislators take upon themselves a very onerous duty to perform. In the discharge of their duties, it is asserted the Legislators are called upon to spend much valuable time and in recognition of such onerous duty the Government have thought fit to make reservation of seats in Medical Colleges for their children. It does not need a long argument to strike down this reservation. In our view it cannot stand on a better footing than the reservation for children of Members of Medical Profession and political sufferers. There is no gainsaying the fact that there is no rational relation between the duties to be performed by Members of Parliament and Legislative Assembly and the object of promoting efficiency in the medical profession. This reservation, therefore, cannot be at all justified as a reasonable classification and must be quashed.

16. Before we come to the contention of Mr. Narendra Mohan Kasliwal in respect of raising of upper age limit for admission to Medical Colleges from 21 years to 22 years we consider it proper to deal with the other two categories of reservations which have been challenged by Mr. Mridul in addition to those attacked by Mr. Narendra Mohan Kasliwal. Mr. Mridul has argued that the reservation of 32 seats for children of Defense Personnel is also not based on any reasonable classification and militates against the fundamental rights of the petitioners to be treated at par with the sons of Defense Personnel in the matter of admission to Medical Colleges. The stand taken by the State in this connection is that the State of Rajasthan has a very large border and in the national interest it is the policy of the State Government to encourage the residents of this State to enter Defense Services under this policy. It is urged that since our conflict with Pakistan in 1965 it has become all the more necessary to encourage our Defense Personnel, and give them all reasonable facilities and concessions so that the Defense Personnel may think that the Nation as a whole is duly recognizing their services in safeguarding the independence of the country.

Learned Counsel for the petitioners has argued that as observed by their Lordships in AIR 1968 SC 1012 the object to be achieved in a case of this kind is to get the best talent for admission to the Medical College and there is no nexus between this sort of reservation for children of Defence Personnel and the said object to be achieved. On the other hand the learned Advocate-General has placed strong reliance on *Subhashini v. State of Mysore,* [4] Similar reservation made in favor of children or wards of the men in Armed Services and Ex-Serviceman including those who are in the Armed Services during the second world war to Medical Colleges in the Mysore State was called into question, and Hon'ble Justice Hegde of the Mysore High Court as he then was observed as follows :-

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

No doubt in AIR 1968 SC 1012 their Lordships of the Supreme Court were pleased to

observe that the object of selection can only be to secure the best possible material for admission to Colleges subject to the provision for socially and educationally backward classes. But it must be recollected that this observation was made in view of the facts and circumstances of that case and their Lordships have themselves observed at another place in that judgment that the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to the Medical College." A situation like the present in which the question of a national interest has cropped up was not at all present before their Lordships while dealing with the question of districtwise allocation of seats in the matter of admission to Colleges. While judging the reasonableness of any law or executive act of the Government we cannot ignore the demand of the times and the interest of the nation as a whole. National interest in our humble opinion is the paramount consideration and has an important bearing on the question of constitutionality and validity of law which we may be called upon to consider. In this connection we cannot do better than reproduce the observations of Patanjali Sastri, C. J., in *State of Madras v. V. G. Row,*:- [5]

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered to be reasonable."

17. While judging the reasonableness of this classification therefore we have to keep in mind not only the abstract proposition of reasonableness but also the circumstances prevailing in the country and our larger national interests which are supreme. The contention on behalf of the State that ours is a border State and that the reservation for

the children of the Defense Personnel is in the larger interest of the nation, is not without substance, and is in our view a reasonable classification and we accordingly uphold it.

18. Then we come to the three seats reserved for being filled in by the State at its discretion in special cases in the particular circumstances. The reply on behalf of the State is that these reservations have been kept for the purpose of exchange of students with the Jammu and Kashmir Government with the object of maintaining cordial relations with that State. Learned Advocate-General has also invited our attention to telegrams Ex. R. 1 and Ex. A. 2 which go to show that these three seats were filled in by students from Jammu and Kashmir as a result of reciprocal arrangement, and, therefore, no exception can be taken to this reservation. It is also urged that the three students from Jammu and Kashmir who have been admitted against this reserved quota have not been impleaded as parties to the writ application. We have duly considered the arguments advanced on both the sides. If the language of this reservation was so worded as not to leave any margine for the power being misused there may have been force in the contention of the learned Advocate-General that the classification is reasonable.

But the language used in respect of this reservation is in our opinion much too wide capable of being so interpreted as to authorize the Government to show favor to particular individuals and admit them. This reservation is therefore likely to create mischief even though for this particular year no serious objection can be taken as the power has been exercised validly and properly, but the reservation as it stands in the notification, in our opinion, gives an unbridled power to the Government to make three nominations depending on their discretion. This reservation therefore cannot be considered as reasonable and we find it difficult to uphold the same and therefore declare it as invalid.

19. This brings us to the question of validity of the notification Ex. 3 whereby the Government raised the upper age limit of students for admission to Medical Colleges from 21 years to 22 years. At one stage Mr. Mridul attempted to argue that this notification was law as defined in Article 13 of the Constitution and Section 32, Item 41 of the Rajasthan General Clauses Act, but he did not press this point, and argued that even though it was an executive act of the Government, it was without any authority and was mala fide and had resulted in an unreasonable discrimination between his clients and other students who were 21 years or less than 21 years old on the one hand and those who were above 21 years of age and have been admitted in the

Medical Colleges as a result of this relaxation in age. He has placed reliance on *Deonarain v. Principal, Jaswant College,* [6] On the other hand the learned Advocate-General pressed upon us that the Government had full authority to prescribe the upper age limit and that the petitioners had no such right that no candidate above 21 years of age should be admitted. The only right, it is urged by the learned Advocate-General, which the petitioners can claim is the right to be considered for admission to the Medical College and in this connection he has placed reliance on *Chitralekha v. State of Mysore,* [7] It is argued by the learned Advocate-General that there is no discrimination in raising upper age limit from 21 years to 22 years and the Government has the power to change the conditions of admission even after the Prospectus is issued to suit the altered conditions when the number of seats has increased. It is urged that the Government neither acted arbitrarily nor capriciously nor with the object of accommodating any individual but have made out categories in pursuance of its policy. Reliance has also been placed on *G. J. Fernandez v. State of Mysore,* [8] and it is argued that the impugned order raising age limit is not justiciable.

20. We may first dispose of the question regarding mala fides. The mala fide is sought to be proved in two ways: firstly it is submitted on behalf of the petitioners that the last date for submission of application was 25-6-1968, and, therefore, on this date only those persons who were not of more than 21 years age could apply. Certain persons who were above 21 years of age and were not eligible applied and they were not entitled to be considered at all but by virtue of the impugned notification they were made eligible and their candidature was considered. It is argued that on account of this notification the chances of the petitioners receded. The other argument is that there might be many more candidates between 21 years and 22 years of age who may have applied for admission but did not do so in view of the prescribed age limit being not more than 21 years. Apart from these conditions it was frankly conceded by the learned Counsel for the petitioners, that they were not in possession of any data to show that this age limit had been altered for the benefit of particular individuals, who were objects of special favor of the Government. Mr. Mridul, therefore, argued that even though malice in fact may not have been established, a case of malice in law was made out. We, however, find ourselves unable to accept the petitioners' contention on the score of malice. The language of the notification shows that the age limit was raised for all candidates without any consideration of caste, creed, religion or profession. It is further clear from the marks-sheet of the candidates above 21 years of age, who have been admitted that out of 13 such candidates who have been given

admission, 10 have got more than 58% of marks and the lowest percentage of marks secured by them is 56.97. On the other hand the lowest percentage of marks of candidates of not more than 21 years of age who have been admitted is 56.80. There is obviously no question of malice in law. It is not the case of the petitioners that the impugned notification regarding age was issued by the Government without applying its mind or on any extraneous consideration or on irrelevant grounds. The presumption is that unless the contrary is shown the Government has acted honestly. The learned Advocate-General has submitted that the age limit had been increased in order to raise the standard of medical education by providing scope for candidates above the age of 21 years and there was no other ulterior purpose or corrupt motive behind raising the upper age limit. It is submitted that in all other States no upper age limit is prescribed nor is it prescribed in the Rajasthan University Act. It is true that a few individuals have got the benefit out of this relaxation in age but that by itself cannot be sufficient to brandish the order as mala fide. There is, therefore, no force in the contention of the petitioners that the order is mala fide.

21. As regards the authority of the Government to alter the age limit after the date prescribed for submission of applications for admission, it is argued that the power of prescribing conditions for admission vests in the Principal and the Government cannot have any say in the matter. In this connection reliance was placed on Statute 26 (4) of the Rajasthan University Act and the observations of this Court in 1950 Raj LW 19. Strong reliance has been placed in this connection on the observations made in Deonarain's case in 1950 Raj LW 19 in paras 40 and 44. We might state at once that it has nowhere been held in Deonarain's case 1950 Raj LW 19 that the Government has no power to prescribe conditions for admission in Colleges owned and run by it. On the other hand a question directly arose in Chitralekha's case, AIR 1964 SC 1823 (Supra). While considering the provisions of the Mysore University Act their Lordships were pleased to observe that the power to prescribe rules for admission to Colleges were conferred on the University and that power was to be exercised by the Academic Council. In exercise of its power the Academic Council prescribed the percentage of marks which a student had obtained for getting admission in a Medical College or an Engineering College. The Government, however, passed orders prescribing criteria for making admissions to Colleges to those who secured the minimum qualifying marks prescribed by the University. This power was challenged and their Lordships held that this is a power which every private owner of a College will have and the Government which runs its own Colleges cannot be denied that

power. This point again came up to be considered by their Lordships of the Supreme Court in the case of AIR 1968 SC 1012 and their Lordships observed:

> "In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the University as to eligibility and qualifications."

It would, therefore, be not correct to say that even though the Colleges in Rajasthan are run by the Government, the Government has no power to prescribe conditions for admission of students to the Colleges. It is difficult to accept that it is only the Principal who is appointed by the Government who can prescribe the conditions for admission and the Government has none. The question then arises even though the Government had such a power to alter the upper age limit for admission, was the power exercised validly in the present case? It cannot be denied that if this power had been so exercised as to infringe any fundamental right or legal right of any of the petitioners, it would (not?) have been recognized as a valid exercise of power. But the petitioners have failed to show how any fundamental or legal right vested in them has been infringed by the impugned notification. One argument advanced on behalf of the petitioners in this connection is that the candidates who were above 21 years of age but had not applied on account of the age limit then prescribed have been discriminated against those who actually applied for admission even though they were above 21 years of age in disregard of the conditions prescribed for admission. It may be true, but none of the petitioners fall in that category and none has come forward to challenge this notification on that ground. The argument is therefore only of academic interest and we cannot strike down this notification on that ground.

22. Another ground which no doubt concerns the petitioners is that if this age limit had not been raised and the percentage of marks for admission had not gone up on account of consideration of the candidates above 21 years of age, the petitioners would have got their admission and thus they have been unlawfully discriminated. We have carefully examined this contention and are of the view that there has been no discrimination against the petitioners. The petitioners no doubt had a right to be considered for admission but they cannot claim a right to be admitted merely because they fulfil the conditions prescribed by the University or prescribed by the Prospectus. If the Government thought that it would add to the efficiency of the medical profession by casting the net for admission wider and by providing scope for students securing

better percentage of marks for admission even though the upper age limit may be changed by one year, it cannot be said that the Government had no power to do so. In the circumstances of the present case when no case of mala fides has been made out we find ourselves unable to adjudge the impugned notification Ex. 3 as invalid merely on the ground that the chances of admission of the petitioners became bleak on account of raising of this upper age limit. We are, therefore, of the view that the notification Ex. 3 does not transgress any fundamental rights or any other legal rights of the petitioners. We are also unable to hold that the raising of upper age limit in the facts and circumstances of the present case is unreasonable. Of course we do not see any force in the contention of the Government that since the notification Ex 3 has been passed in exercise of its executive powers it is not justifiable. We are of the view that if this notification had come in conflict with any of the fundamental rights guaranteed under the Constitution or any other legal rights of the petitioners we would not have had the slightest hesitation in striking it down. But for the view which we have taken with regard to its reasonableness and validity we have no alternative but to uphold it.

23. The last question is as to what order should be passed in view of the findings arrived at by us. So far as the validity of reservations of seats made for children of Doctors, Vaids, Hakims and para-medical staff, for children of political sufferers and for children of Members of Parliament and Legislative Assembly are concerned they must be struck down as invalid, unreasonable and unconstitutional and we accordingly do so. So far as the reservation of three seats to be filled by the Government in its discretion in special cases in particular circumstances is concerned, that reservation is also bad and must go. We accordingly strike it down. As regards the candidates who have been admitted against the abovementioned four categories of reservation which we have struck down, it is argued by the learned Advocate-General that these candidates have already joined the classes and have paid the fee and purchased the books and now if their admissions are cancelled their career would be ruined. The learned Advocate-General also submitted that there are a few States against the reserved quota still lying vacant, and it would be possible to admit some candidates out of the general category according to merit.

24. Mr. Dwarka Prasad Gupta representing respondents Nos. 11, 14, 17 and 18 in the writ petition No. 751 of 1968 placed before us a few authorities where certain reservations made by the Government in respect of admission to Colleges were struck down yet the admissions already made against those reservations were not disturbed.

These cases are *Lalita Shuri v. State of Jammu and Kashmir,* [9] *V. Raghuramulu v. State of Andhra Pradesh,* [10] *Ramakrishna Singh v. State of Mysore,* [11] and also *Laila Chacko v. State of Kerala, AIR 1967 Kerala 124* and AIR 1968 Patna 3 which we have already referred above in connection with other points. We have given our due consideration to this matter and are of opinion that it would not be proper at this stage to non-seat the candidates who have already been admitted against the reserved quota which has been adjudged by us to be invalid. But these observations which we have adjudged as invalid will not hold good when selection is made thereafter. We further direct the Government and the Officers of the Colleges concerned to reconsider the applications of the petitioner for admission on merit after ignoring the reservation of those categories which we have struck down as invalid. If on such reconsideration it is ultimately found that these petitioners or any of them are entitled to be admitted steps may be taken to admit them within three weeks from today. Learned Counsel for the petitioners have submitted that direction should be given to the Government to create additional seats, if necessary to accommodate the petitioners. Learned Advocate-General, however, submits that the Government would do its best to accommodate the petitioners as far as possible. In the circumstances, we do not consider it necessary or proper to give any such direction.

25. The result is that these writ applications are partly allowed as mentioned above. Since the petitioners have succeeded in part, we consider it proper to leave the parties to bear their own costs

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Petitions partly allowed.

Cases Referred.

1. AIR 1968 SC 1012
2. AIR 1968 Pat 3
3. AIR 1961 Mad Pra 247
4. AIR 1966 Mys 40
5. AIR 1962 SC 196
6. 1950 Raj LW 19
7. AIR 1964 SC 1823
8. AIR 1967 Mys1753
9. AIR 1966 Jamm and Kash 101

10. AIR 1958 And Pra 129
11. AIR 1960 Mys 338