

(1978) 11 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 216 of 1978

Anil Nag

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 18-11-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(4), 166

Citation : (1979) ShimLC 160

Hon'ble Judges : T.U. Mehta, C.J.; D.B. Lal, J

Bench : Division Bench

Advocate : P.N. Nag, for the Appellant; M.G. Chitkare, General and S.S. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—The Petitioner herein Shri Anil Nag has passed Pre-medical Examination in the year 1977 and has appeared in the Competitive Examination (which hereinafter is also referred to as Entrance Examination) for admission to Himachal Pradesh Medical College, Simla, taken on 10th, 11th and 12th August, 1978. He has, however, failed to secure his admission to the said College for the current academic year 1978-79 when the College opened in the month of September this year. He competed in the general category of seats in the college but failed to secure a seat on merits and has, therefore, challenged by this writ petition certain reservations of the seats made by the Government. His contention is that if these reservations are found illegal and void, the number of general category of seats would be increased to that extent with the result that he would get admission on merits.

2. Himachal Pradesh Medical College, Simla is admittedly a Government College affiliated to the Himachal Pradesh University. It is financed and managed by the Government of Himachal Pradesh. The total number of seats sanctioned for the College in the month of June or July, when the prospectus for the academic year 1978-79 was issued, was 60. Out of these 60 seats, 17 seats were reserved as

under:

9 seats for Schedule castes;

3 seats for Scheduled tribes;

5 seats for the nominees of the Central Government.

The remaining 43 seats thus went to the General category which was open for competition to all eligible students. The prospectus for the year 1978-79 invited applications on the basis of the above stated reserved and general categories.

3. From the record which is produced in this case, and which is not in dispute, it becomes clear that the Medical Council of India was thinking of making some reservation in all the Medical Colleges in India for foreign students. Reference to the Annexure RFF, which is produced in this case, shows that the Medical Council of India at its meeting, dated 17/18th March 1978 approved of the following decision of its Executive Committee:

Foreign students applying for admission can be considered only if their applications are forwarded through the Ministry of Health and the Medical Council of India and provided they satisfy the minimum requirements for admission as prescribed by the Medical Council of India. In case they do not meet the minimum requirements then they would be required to undergo Pre-medical training for a period of two years after which they could be considered for their suitability for admission. Candidates should submit the full details of their qualifications to be considered for their suitability for admission into the medical colleges. All such admissions will be within the prescribed quota for admission for a medical college and no additional seats can be created for the same.

The Secretary, Medical Council of India circulated this letter to the Registrars of all the Universities and other concerned authorities.

4. It is clear from the above quoted decision of the Medical Council that the applications for admission of foreign students was to be routed through the Ministry of Health, Central Government.

5. It appears that with a view to facilitate entry of foreign students in Himachal Pradesh Medical College, the Council of Ministers of Himachal Pradesh in their meeting, dated 4th April 1978 resolved that 5 seats of the Himachal Pradesh Medical College should be reserved for the nominees of the Central Government. The Council further resolved that these 5 seats which were reserved for the nominees of the Central Government should, however, be over and above the sanctioned strength of 60 seats in the Medical College.

6. It is found that after this resolution of the Council of Ministers, the Principal, Medical College at Simla addressed two letters to the Secretary, Medical Education, dated 8-6-1978 and 9-6-1978, copies of which are found at Annexures RG and RH.

7. On 22nd June, 1978, Joint Secretary, Medical Education, addressed the letter found at Annexure RA to the Secretary, Medical Council as under:

With reference to your letter No. MCI-37(2)/78-Med/2781, dated 11-4-1978 on the above subject, I am directed to say that this Government have decided to reserve 5 seats at H.P. Medical College, Simla for the nominees of the Central Government for the year 1978-79. These 5 reserved seats will be in addition to the existing 60 seats at present in the Himachal Pradesh Medical College, Simla, because there is only one Medical College in the State to watch the interest of the public of this Pradesh, and on request of the Central Government twice, 5 seats have been reserved for admission in M.B.B.S. Course from this academic year which will be in addition of 60 seats. As such it is requested that the Medical Council of India may kindly approve to increase the number of seats from 60 to 65 in Himachal Pradesh Medical College, Simla and will have no objection to increase the seats. Approval of Council may kindly be conveyed to this Government immediately so that the academic session could be started from, the fixed date.

Reply to this letter given by the Secretary, Medical Council, is found at Annexure RB which is dated 30th August 1978. Reference to it shows that on 10th August 1978 the Executive Committee of the Medical Council considered the above referred letter of the Government regarding the increase of 5 seats and approved the increase of 5 seats at the Medical College, Simla. It is thus evident that 5 seats which were reserved for the nominees of the Central Government out of the existing strength of 60 seats, were increased after the prospectus for the academic Year 1978-79 was published.

8. It appears that thereafter the Government took a decision that out of these additional strength of 5 seats, 3 seats should be reserved for "political sufferers" who were arrested for political reasons during Emergency. At Annexure RJ is the resolution of the Council of Ministers in this connection made on 26th August, 1978. Reference to the copy of this resolution found at Annexure RJ shows that the facilities of reservation which were afforded to political sufferers who had suffered during the Freedom Movement in the times of the British, was proposed to be extended even to those political sufferers who were arrested for political reasons during the Emergency which was declared on 25th June, 1975.

9. Pursuant to this resolution of the Council of Ministers, a meeting of the Principal of the Medical College, Simla with certain representatives of the Himachal Pradesh University and some other persons was held on 2nd September, 1978 under the Chairmanship of Secretary, Health and Family Welfare of the Government of Himachal Pradesh. This meeting unanimously agreed that 3 seats out of the 5 additional seats should be reserved for the political sufferers in accordance with the Government decision. The proceedings of this meeting are found at Annexure RC. At this meeting, one Shri Bajaj who was representing the Himachal Pradesh University wanted a clear definition of "political sufferer" so that the said definition could be inserted in the

advertisement to be published in newspapers.

10. Pursuant to the above referred proceedings of the said meeting, Secretary, Medical Education, Government of Himachal Pradesh addressed one letter to the Principal, Medical College on 4th September 1978 wherein definition of political sufferer was prescribed as under:

Political sufferer means a person who suffered imprisonment or detention of not less than 6 months or who died or was killed in action or in detention or was awarded capital punishment or became permanently incapacitated due to firing or lathi charge etc. or lost the job or means of livelihood or a part of the whole of his property on account of participation in the national movements for the emancipation of India, or persons or their sons who were arrested during emergency (declared on 25th June, 1975) on political grounds but not released from jail on account of pardon.

This is clear by reference to Annexure RK which is the copy of the above said letter of the Secretary, Medical Education, dated 4th September 1978. Pursuant to this definition, the Himachal Pradesh University issued an "Examination Notice" on 22nd September, 1978 incorporating the above referred definition. It should be noted here that the general Entrance Examination was by this time already held, as noted above, on 10th, 11th and 12th August for the purpose of filling the existing 60 seats in the College. However, the above referred "Examination Notice", dated 22nd September, 1978 was issued by the authorities concerned with a view to hold a test for selecting the students to fill the reserved 3 seats of political sufferers out of the additional 5 seats approved by the Medical Council.

11. By this time, the Government had also decided the manner by which the proof of being a political sufferer during Emergency could be furnished. This manner was prescribed in the letter of Secretary, General Administration, dated 29th August, 1978 addressed to the Secretaries, Education and Health. A copy of this letter is found at Annexure RE. This letter shows that the person who wanted to take advantage of this new reservation for political sufferers was expected to apply to the Collector of his District and to obtain a certificate from him to the effect that he was a political sufferer. Paragraph 3 of this letter further shows that the Government wanted to implement the decision as regards political sufferers soon and, therefore, the Government directed that in case any person who could not immediately obtain the above referred certificate from the Collector of his District, he should file his own affidavit, and on the basis of this affidavit he or his children should be given the facility of this reservation for political sufferers.

12. It is found that pursuant to the above facility of reservation for political sufferers, certain students appeared in the second examination which was taken on 26th, 27th and 28th October, 1978. Out of those who appeared in this second examination two students named Kumari Vajanthi Sharma and Shri Rakesh Sud

were selected. Thus out of the three seats which were reserved for the political sufferers, only two could be filled and one seat has remained unfilled. This one remaining seat remains to be given to the general category, but the other two seats of the additional 5 seats have already been given to the General category of students on bases of merits.

13. It should be noted here that out of the original 60 seats of the College, 17 seats were reserved for Scheduled castes, Scheduled tribes and Central Government nominees and balance of 43 were thus available to the General category. But out of the reserved category of Scheduled tribes and Scheduled castes 4 candidates were not selected with the result that these seats were also released to the advantage of the general category thus making the total number of seats for general category to 47. Two more seats were added to the general category after making reservation of 3 seats for political sufferers from the additional sanction of 5 seats. Thus, in all 49 seats have been allotted to the general category up to this date. However, the Petitioner has still not got any chance of being selected on merits in the general category of seats.

14. The contention of the Petitioner is that the action of the Government in reserving three seats for the political sufferers out of the 5 additional seats sanctioned and approved by the Medical Council was illegal and, therefore these three seats should also go to the general category.

15. The Petitioner has approached this Court by this writ petition on 21st October, 1978, that is before the second examination for the category of political sufferers was taken. By C.M.P. No. 1476 of 1978, the Petitioner prayed for an interim relief to restrain the Respondents from holding the second examination for political sufferers. This application was, however, rejected with the observation that the admission of the students who are admitted in the reserved quota of political sufferers shall be subject to the result of the writ petition.

16. The writ petition being of urgent nature was immediately put on Board for hearing after receiving the returns filed by the Respondents. During the course of the hearing, the learned Advocate-General drew the attention of the Court that two students were selected as a result of the second examination for political sufferers and, therefore, they should join as necessary parties. This oral request was rejected with the observation that if any of them wanted to intervene, the Court would be ready to hear them during the course of the arguments. On next day of the hearing, Shri Kedar Ishwar appeared on behalf of Rakesh Sud who is one of the students admitted in the reserved seat of political sufferer. He was allowed to intervene and was heard during the course of the argument.

17. The contention of the Petitioner is that the reservation of 3 seats for political sufferers out of the 5 additional seats approved by the Medical Council in the month of August 1978 is devoid of any validity inasmuch as it is not expressed to be in the name of the Governor as contemplated by Article 166 of the Constitution and it does not amount to an executive order of the Government.

18. It was further contended on behalf of the Petitioner that reservation of 3 out of 5 additional seats infringes the rule that more than 50 percent of such seats cannot be reserved as laid down by the Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, . The Petitioner has also raised a plea that this reservation of 3 seats for political sufferers is illegal because such a reservation cannot be made after the Entrance Examinations taken on 10th, 11th and 12th August were over pursuant to the original prospectus and also because such a classification is in violation of Articles 14, 15 and 29(2) of the Constitution.

19. As for the second examination, taken in the month of October for selecting the students out of the category of political sufferers, the Petitioner has contended that no such second examination is contemplated by the Ordinances under which the University is governed.

20. Over and above these contentions, the Petitioner has further challenged the reservation of 5 seats for the nominees of the Central Government, contending that the power given to the Central Government for such nominations is unguided, arbitrary and unchannalised, and hence, offends Article 14 of the Constitution.

As against these contentions, the learned Advocates of the Respondents contended that since the Medical College, Simla is owned and financed by the Government it is always permissible under law to the Government to classify the seats of the College in a reasonable manner, and since these 5 seats were added on the approval of the Medical Council, subsequent to the previous Entrance Examination taken in the month of August, it was within the power and authority of the Government to make reservations for political sufferers, and for that purpose, also to conduct separate examination. It was pointed out that the percentage of reservation of these 3 seats should not be counted with reference to the additional 5 seats because these 5 seats were in addition to the original 60 seats and the admission to these seats were for the same academic year, and the same course. Therefore, the percentage of these 3 seats should be calculated with reference to the total number of 65 seats, and if that is done, it comes to 5 percent of the total number of seats. The Respondents also contended that reservation for political sufferers is a valid reservation as held by the Supreme Court in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , and therefore by this reservation none of the provisions of Article 14, 15 or 29(2) is infringed. Relying upon the record produced in the case, the Respondents also contended that the decision about the disputed reservation is substantially proved to have been taken by the Government and it does not matter if the said decision is not expressly referred to as having been taken in the name of the Governor.

21. The Respondents have justified the reservation of 5 seats in favour of the nominees of the Central Government by contending that it was only on account of this reservation that the additional 5 seats could be obtained for the College.

22. The learned Advocate-General strenuously urged on behalf of the Respondent

State, relying upon the affidavit filed by the Deputy Registrar, Himachal Pradesh University, that even if it is held that all the additional 5 seats should go to the advantage of the general category of seats, without making any reservation for political sufferers, the Petitioner, as at present, does not get admission to the Medical College on merits, looking to the marks which he has obtained and, therefore, this writ petition should be dismissed without entering into any further discussion, on this limited ground. In this connection it should be noted here that the merit list of the students who have appeared in the General Examination taken in the month of August 1978 was produced in sealed cover before this Court and was opened with a view to see what marks the Petitioner has obtained and how he stands in the merit list; and from this merit list it has been pointed out by the Deputy Registrar of the Himachal Pradesh University in his affidavit that even if all the 5 additional seats approved by the Medical Council are taken to increase the number of general seats, the Petitioner does not stand any chance of getting an admission because there are six students who rank above him in merits. The learned Advocate-General has, therefore, contended that in view of this position it would be futile to decide this writ petition at the instance of the Petitioner.

23. In view of these contentions, following points arise for consideration:

- (1) Whether the reservation of 3 seats for political sufferers made out of the 5 additional seats sanctioned by the Medical Council is proved to have been made by a valid executive order of the Government under Article 166 of the Constitution of India?
- (2) Whether the said reservation infringes the rule of 50% adopted by the Supreme Court in Balaji's case?
- (3) Whether the said reservation could have been validly made after the Entrance Examinations were over in the month of August 1978 pursuant to the prospectus issued for the Academic Year 1978-79?
- (4) Whether the said reservation offends any of the Articles 14, 15 and 29(2) of the Constitution?
- (5) Whether it was permissible for the University to take second examination for the purpose of filling the above referred three reserved seats for political sufferers?
- (6) Whether it is shown that the reservation of 5 seats for the nominees of the Central Government offends Article 14 of the Constitution?
- (7) Whether it would be futile to decide the contentions raised by the Petitioner in this writ petition in view of the fact the Petitioner does not get any present right to get admission even if all the 5 additional seats are counted towards the general category of seats for the Medical College ?

24. Taking the point No. 1 for our consideration, we have already narrated, in the

facts given above, that the decision as regards the reservation of 3 seats for political sufferers out of the above 5 seats approved by the Medical Council was taken by the Council of Ministers of the Himachal Pradesh Government as found at Annexure RJ on 26th August, 1978. This resolution was thereafter followed up in the subsequent correspondence which has taken place at the different levels in the Secretariat. We have already referred to this correspondence in the foregoing portion of this judgment and, therefore, the same need not be repeated over here. The letter written by the Secretary, Medical Education on 4th September, 1978 and addressed to the Principal, Medical College, found at Annexure RK is one such letter which conveys the decision of the Government on the question of reservation. It was on account of this decision of the Government that a meeting was held under the Chairmanship of Secretary, Health and Family Welfare on 2nd September, 1978, as found at Annexure RC. The grievance which is made by the Petitioner is that in spite of this material it cannot be said that the Respondents have proved that the Government had taken an executive decision to reserve 3 seats for political sufferers. In his application under Order 6, Rule 17, which is numbered as Miscellaneous Petition No. 1502 of 1978, the Petitioner has contended that an executive order of the Government should have been expressed in the name of the Governor who is the head of the State, and since the decision regarding reservation is not expressed in the name of Governor as contemplated by Article 166 of the Constitution, there is no decision in eye of law. In our opinion, all these contentions are misconceived because by now it is a settled position in law that expression in the name of the Governor, which is contemplated by Article 166(1) of the Constitution, should not be in any particular formula, and that Article 166 of the Constitution does not require a magic incantation which can only be expressed in a set formula of words, because what the Court has to see is whether the substance of the requirements of Article 166(1) is there or not (vide the decision given by the Supreme Court in *The State of Bombay Vs. Purushottam Jog Naik*, It has been repeatedly held that the provisions contained in Article 166(1) are directory and not mandatory in their nature. In the case of *R. Chitralekha and Another Vs. State of Mysore and Others*, the facts were almost similar to the facts of the present case. In that case an Under Secretary to the Government communicated, by a letter to the Selection Committee for admission to the Technical Colleges in the State, the Government decision prescribing an interview to regulate the selection of candidates on the basis of marks obtained by them at the interview besides their marks in the written test. It was contended in that case that as the order was not issued in the name of the Governor it was void and, therefore, no interview could be held pursuant to that letter. This contention of the Petitioner in that case was found to be without merit. While disposing of that contention, the Supreme Court observed that it was settled law that the provisions of Article 166(1) were only directory and not mandatory in character and that if these provisions were not complied with it could still be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor. The letter which was considered by their Lordships of the Supreme Court in that case did

not conform to the provisions of Article 166(1) but it ex facie stated that the order referred to therein was issued by the Government. In view of this decision we find no substance in the point No. 1. We further find, on consideration of the documents produced before us, that the order of the Government reserving 3 seats for the political sufferers does not suffer from any legal infirmity under Article 166 of the Constitution.

25. The next point is whether the reservation of 3 seats for political sufferers infringes the rule of 50 percent as prescribed by the Supreme Court in *Balaji's* case (supra). It is evident from the facts of the case that these additional 5 seats were approved for the same academic year, and for the same course, and its result was to augment the original number of seats at the Medical College and to make it 65. The percentage of the reservation should be calculated with reference to the total number of 65 seats and not with reference to the 5 additional seats. The correspondence which is referred to above makes this sufficiently clear. In view of this we see no force even in this second contention of the Petitioner.

26. The third contention of the Petitioner is whether it was open to the Government to make this reservation after the Entrance Examinations were over in the month of August pursuant to the prospectus issued for the academic year 1978-79.

27. Now, in this connection it would be necessary to again make a reference to all the documents which are referred to above showing the background of facts which ultimately led to the addition of 5 seats. The earliest resolution of the Council of Ministers, which is dated 4-4-1978 and which is found at Annexure RF, shows that when 5 seats were reserved for the nominees of the Central Government, it was specifically made clear by the said Council that these 5 seats would be over and above the 60 seats which were already sanctioned for the College. This resolution of the Council, therefore, makes it clear beyond any shadow of doubt that the Government was not willing to lessen the number of general seats by making the reservation of 5 seats for the Central Government. The Government, however, agreed to reserve, 5 seats for the nominees of the Central Government only on condition that 5 more seats should be sanctioned for the College. It is thus clear that the additional sanction of 5 seats for the College was in consideration of the reservation of 5 seats made for the Central Government. In other words, it was never intended by the Government that the total number of general seats available after making reservations should be reduced. In this connection we cannot overlook the fact that the reservation of 5 seats for the Central Government was made out of the existing 60 seats, because time to publish prospectus was ripe, and the expected sanction for the corresponding increase of 5 seats was still awaited. It is thus clear that all the 5 seats which were sanctioned subsequent to the publication of the prospectus were on account of the reservation made for the Central Government and not on account of the desire of the State Government to reserve any quota for political

sufferers. Under these circumstances, the decision of the Government to split up the additional seats was fundamentally against the purpose for which the additional 5 seats were sanctioned.

28. Apart from what is stated above, it is found that the prospectus which was issued for the academic year 1978-79 embodied rules for admission to the Medical College, Simla and as such the rules stated therein amounted to a promiss held out by the Government to the general public that admissions to the Medical College, Simla would be regulated by these rules only. Of course these rules are not issued under any statutory provisions of law, and, therefore, these rules found in the prospectus would not be possessing any status of a statutory law. Nonetheless, they do possess the force of law having a binding effect on the Government or other competent authorities for the purpose of giving admission to the College. In this connection we may profitably refer to the decision given by a Division Bench of this Court in *Km. Manju and Another Vs. State*, wherein it is observed that rules made by such a college, or on its behalf by the State Government, and published in form of a prospectus were the representation to the public or to the individual seeking admission and, therefore, it would not be open to those who make such representations, even as a result of executive order, to apply some other rules or criteria not contained in the published rules. It is in view of this legal position as regards the binding nature of the rules published in the prospectus that we have to consider whether the Government was legally justified in creating a special category of reserved seats which category was not previously publicised in the prospectus.

29. The prospectus issued for the year 1978-1979 for admission to the Medical College, Simla shows that for the purpose of admission to that College only 3 categories of reservations, namely (one) scheduled castes, (two) scheduled Tribes, and (three) nominees of the Central Government were mentioned. The students who sought admission to this College obviously did so under a belief induced by these representations that there shall not be any further category of reservations and that the seats which did not fall in the reserved category would be available for the general category. Led by this belief these students might not have tried to obtain admissions elsewhere. If that be so, we are of the opinion that it was not open to the Government to make any changes in the categories originally publicised by creating altogether a new category with regard to the additional seats alter the concerned students acted on the original representation as regards categories and sought admission in the College.

30. The learned Advocate-General referred to a Note which is added at the end of the prospectus stating that the "College" reserved the right to alter the prospectus and terms and conditions at any time and that such alterations would be binding on students. In our opinion, this Note is of no help to the Respondents, because it obviously refers to the power of alteration before the students act upon the representations contained in the original prospectus. Once the students concerned act upon this original representation, the authorities

would be estopped from altering the original conditions to the disadvantage of the students who have so acted.

31. It was then contended by the learned Advocate-General that the chronological events with regard to the issuance of the prospectus, taking of the first examination in August, and the sanction of 5 additional seats at a subsequent stage, show that all those who appeared in the first Entrance Examination taken in the month of August did so with the clear knowledge that only 43 seats were available to the general category. According to the learned Advocate General, therefore, the reservations out of the additional 5 seats did not prejudice these students in any manner, because they had not competed with regard to these 5 seats when they appeared in the August Examination. This contention is also not acceptable if once it is believed that these additional 5 seats had the effect of augmenting the total number of seats for the same academic year and the same course. If, in this connection, a reference is again made to the prospectus it will be found that it specifically mentions that if a seat in the reserved category is not filled in then that seat would be available for the general category. The seats available for the general category are, therefore, found to be the residuary seats and the only clarification which was required in the prospectus was with regard to the number of reserved seats. Reservation is not a rule but it is an exception. Therefore, it is the exception which is required to be mentioned. When that is done it would follow as a natural corollary that those seats which are not reserved would be available to the general category. Under the circumstances, even if at the time of the first Entrance Examination taken in the month of August, students knew that at that time only 43 seats were available for the general category, they were entitled to take the advantage of any increase of seats in the general category at a subsequent stage.

32. The power of the Government to classify seats for the purpose of reservation cannot be denied. But this power should be exercised at the time of publishing the prospectus or by publishing the amendment made in the prospectus before the Entrance Examination is taken and the concerned students make the commitment in accordance with rules contained in the original prospectus. This would be more so in view of our finding that the rules contained in the prospectus have the force of law. Under the circumstances, we hold that the reservation of 3 seats out of the additional 5 seats for political sufferers made by the Government is an infringement of the rights of the students who sought admission to the general category of seats in the Medical College and has resulted in substantial injustice to them.

33. Coming to the point No. 4, which is with regard to the challenge to this reservation under Arts. 14, 15 and 29(2) of the Constitution, we find that the principle which is accepted by the Supreme Court is that the Government which bears the burden of running a particular educational institution cannot be denied the right to decide from what sources the admissions to that institution will be made. Therefore, if the sources are properly classified by the Government on

some reasonable basis it is not for the Courts to interfere with the manner and method of classification, as held in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, and re-affirmed in *Indranarayan Vs. Roop Narayan and Another*, . However, for a reasonable classification two conditions are necessary, namely, (1) it should be on intelligible differentia which distinguishes persons or things grouped together from others left out of that group, and (2) the differentia must have some rational nexus with the object sought to be achieved. If these two tests for classification are complied with there would be no infringement of Article 14 of the Constitution. The classification above referred to should not also infringe the provisions of Article 15(1) which prohibits discrimination on grounds of religion, race, caste, sex, place of birth. This classification has also to undergo a further test under Article 29, because Sub-article (2) of Article 29 describes that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Thus, if the classification under dispute can stand all these tests of Articles 14, 15(1) and 29(2), then it would be open to State . Government to resort to such a classification for the purpose of reservation of seats in the educational institution financed and managed by it. At this stage notice should also be taken of Sub-article (4) of Article 15 which says that nothing in Article 15(1) or Article 29(2) shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens.

34. Now if we look to the reservation made by the State Government in favour of "political sufferers", we find that the definition of a "political sufferer" quoted above, falls into two categories of the sufferers. The first category of sufferers consists of all those persons who suffered in a particular manner during the fight for freedom against the foreign Government. The second category of political sufferers consists of those who are said to have suffered during the period of Emergency which was imposed on 25th June, 1975. It is not a disputed position that two students, including the intervener Rakesh Sud, have been given admission as they were found falling within what we prefer to call the "Emergency clause" of the definition.

35. The question, therefore, which arises to be considered is whether (SIC) this emergency clause of the definition fulfills the tests of Articles 14, 15 and 29(2) of the Constitution. So far as Article 29(2) of the Constitution is concerned, it has no application because the Petitioner is not denied admission to the College on the ground only of religion, race, caste or language. So far as Article 15 is concerned, it cannot be said that the Petitioner is discriminated on the ground only of religion, race, caste, sex or place of birth. So far as Sub-article (4) of Article 15 is concerned, the State cannot justify this classification on the ground that political sufferers falling within the emergency clause of the definition are socially and educationally backward classes of citizens. However, this classification as contained in the emergency clause has got to satisfy the test of Article 14 of the Constitution. As stated above, classification which would stand

the test of Article 14 should be a definite classification which would provide an intelligible differentia which distinguishes the persons grouped together from those who are left out of that group. In our opinion, if we look to the definition of political sufferer in the emergency clause, we find that it is so vague that it fails to provide this test of intelligible differentia. This clause is found in the following words:

Persons or their sons who were arrested during emergency (declared on 25th June, 1975) on political grounds but not released from jail on account of pardon.

On the face of it, the definition shows that persons who were arrested during emergency on political grounds or their sons would be covered by the definition of "a political sufferer". It should be noted that unlike the definition of a political sufferers which is given in the previous clause which stipulates the sufferers in the national movement for emancipation of India, the definition contained in the emergency clause speaks only of the arrest simpliciter without having reference to the duration of arrest or the nature of the suffering incurred by the person concerned. The category of sufferers who have suffered in the national movement for freedom requires the imprisonment or detention of not less than 6 months or death in action or capital punishment or permanent incapacity or loss of job or of property. But the definition contained in the emergency clause does not contain any criteria. The result is that even if a person was arrested during emergency for a day, or for that matter for merely an hour, he would be entitled to get the benefit of this reservation if the Collector finds, rightly or wrongly, that he was arrested for that short period on "political grounds". The definition goes to the extent of saying that not only that person himself but also his sons would be entitled to the benefit of reservation. If this reservation is allowed to be retained in this manner for all subsequent academic years, then if a student of about 20 years was arrested for an hour or two during emergency on political grounds on account of his same political activity, not only he but also his son would be entitled to this reservation after a number of years at the cost of other meritorious student. This particular instance highlights the absurdity of the situation resulting from the logical application of the emergency clause. Again, it is not known what would be considered as "political ground" for arrest during emergency. The expression "political ground" is too nebulous to be contained in any specified and definite idea. It is also not known why only the sons and not the daughters of a political sufferer covered by the emergency clause are given advantage of that clause. The stipulation about "release on account of pardon" is also incapable of making any intelligible differentia, because if a person arrested purely on political ground, was thrown in jail and remained there for a number of days, and was compelled to give pardon under torture, it is difficult to comprehend why he should not get the same advantage which is obtained by a person who was arrested for two hours and let off without obtaining any pardon from him. We thus find, from every aspect of this definition contained in the emergency clause that it is not capable of providing any intelligible differentia which would distinguish the contemplated class from those who fall outside that

class. The definition is patently vague and, therefore, its implementation is likely to result in pick and choose at the sweet will of those who are interested to indulge in administrative nepotism.

36. Again if we apply the second criteria of classification, namely, that the contemplated differentia must have a rational nexus with the object sought to be achieved, we find that even that criteria is not fulfilled. The object of a medical institution, imputing medical education to citizens, is two-fold, namely, (1) to give medical training to the best available talents, and (2) to distribute this training in an equitable manner so that even the weaker sections of the society can avail of its benefits. So far as the first object is concerned, it cannot be said that the political sufferers of emergency form the only class which could provide the best available talent. So far as the second object is concerned, it cannot be said that these political sufferers of emergency constituted the weaker section of the society. In the case of *D.N. Chanchala v. State of Mysore* (supra), the Supreme Court upheld the validity of the classification contemplated by the category of freedom fighters of the time of the British days because on account of the long and arduous fight for freedom which went on for years those who challenged the British Suzerainty had to undergo long years of hardship with the result that they could not pay proper attention to their family affairs including the education of their children. Even so the definition provided certain specific criteria to decide who out of those who struggled against the British rule were entitled to be covered by the definition of political sufferers. So far as the emergency clause is concerned, it cannot be said that a person who was arrested for an hour or two became so weak and backward socially and educationally that he could not provide proper attention to the education of his children. We thus find that even the second criteria for a valid classification which insists on having any nexus with the object which is sought to be achieved is not satisfied by the emergency clause.

37. We further find that though a person who wants to take advantage of this emergency clause is required to produce a certificate from the Collector of his District, there is nothing in record (sic) show on what basis and with what guidelines the Collector is supposed to decide and to give the certificate to the effect that a particular person is a political sufferer of emergency. If no guidelines are provided in this respect the matter would be at large and open to all sorts of political and social pressures. The Collector is not required to record any reasons for coming to a particular conclusion. This would result in the implementation of the type which would be fundamentally obnoxious to the equity clause enshrined in Article 14 of the Constitution. This is not enough, because we find by reference to Annexure RE that the Government have directed that in case a particular person is not able to obtain the certificate of the Collector immediately his case should be considered on the strength of his own affidavit. This shows that the Government have not insisted on any check upon the claim of a person that he is a political sufferer.

38. We, therefore, conclude that the emergency clause of the definition of a political sufferer quoted above directly offends the provisions of Article 14, and on that ground also, it should be struck down. We dispose of the point No. 4 accordingly.

39. Point No. 5, which is with regard to the validity of the second examination conducted during the month of October, does not arise to be considered in view of our above recorded findings on points Nos. 3 and 4.

40. So far as point No. 6 is concerned, the question is whether reservation of 5 seats for Central Government nominees offends Article 14 of the Constitution as contended by the Petitioner. While considering this point it should be recalled that 5 seats which were added subsequently on approval of the Medical Council should, in our opinion, go to the general category. These seats were created only for the purpose of making reservation for the Central Government nominees. Therefore, the advantage of these additional 5 seats became available to the general category only in view of the fact that this reservation was made previously in favour of the Central Government nominees. In that view of the matter, the general category of seats which have the advantage of the additional 5 seats cannot be allowed to say that the reservation made in favour of the Central Government nominees is void and illegal.

41. Apart from that position, Shri Nag, the learned Advocate of the Petitioner, contended that the delegation made by the State Government in favour of the Central Government for the purpose of nominating the students for these 5 seats is excessive and for this proposition he has put reliance upon the decision given by the Rajasthan High Court in *Surendrakumar and Others Vs. State of Rajasthan and Others*, wherein such an authority given to the State Government was struck down as it was found likely to create mischief. It was observed in that decision that the authorisation to the State Government to make appointments of the reserved seats gave an unbridled power to the Government to be exercised at their discretion. We find that this decision of the Rajasthan High Court can in no manner be considered as a good one in view of the decision given by the Supreme Court in *Kumari Chitra Ghosh (supra)* wherein it is held that the mere fact that the Central Government has to make nominations with regard to the reserved seats cannot be considered to be a preferential treatment of any kind.

42. Apart from the above referred decision of the Supreme Court we find that it is abundantly clear from the documents discussed above that reservation in favour of the nominees of the Central Government was required to be made only for the purpose of giving admission to foreign students. Now the question of admission to be given to the foreign students mainly depends upon our relations with the foreign countries, bilateral agreements with them and exigencies of foreign policy to be pursued from time to time. A proper judgment with regard to these questions can be given only by the Central Government and, there fore, it is only the Central Government which can decide which of the foreign students

should be given admission in the reserved quota of a particular college. In our opinion, even if any guidelines are required for this purpose these guidelines are always available to the Central Government from the foreign policies pursued and treaties and agreements entered into by it with foreign countries and other similar exigencies. Under the circumstances, we see no infringement of Article 14 of the Constitution in this reservation.

43. Last point which remains to be considered is with regard to the contention of the learned Advocate-General that since the Petitioner is not likely to be profited, as at present, even if all the 5 additional seats are taken for the benefit of the general category, this writ petition should not be decided on other points and should be disposed of on the short ground that the Petitioner is not entitled to any relief. In this connection, we find from the record and the affidavit filed by the Deputy Registrar, Himachal Pradesh University, that at present 49 seats of the general category have been filled-in in the medical college. These 49 seats include two seats which were given to the general category out of the 5 additional seats approved by the Medical Council. Therefore, if all the 5 additional seats are thrown in the general category, 3 more students of the general category would be provided on basis of their standing in the list of merits. The list of merits, as at present, is shown by the Deputy Registrar, Himachal Pradesh University is as under:

Name of the student Total Marks Marks in Biology

1. Suman Kaushal 163 64
2. Pradeep Kumar Kathia 163 51
3. Kumari Vajanthi Sharma 162 72
4. Anil Sood 161 65
5. Anil Nag the petitioner) 161 63
6. Dalip Kumar 161 58

For the purpose of clarification it should be mentioned that it is the rule of the University that if two candidates have equal number of total marks, then priority for the purpose of admission should be given to the one who has secured higher marks in Biology. This is the reason why, though Suman Kaushal and Pradeep Kumar, mentioned at Serial Nos. 1 and 2 in the above quoted table, have secured equal number of total marks, Suman Kaushal is shown higher in the list, and for the same reason even through Serial Nos. 4, Anil Sood, 5 Anil Nag (the Petitioner) and 6 Dalip Kumar have each secured total of 161 marks, they are given priority in the list on the basis of marks obtained by them in the subject of Biology. It should further be noted that Kutnari Vajanthi Sharma, who is shown at Serial No. 3 in the above table, is one of the candidates selected in the reserved category of political sufferers. But the above table shows that even if this reserved category of political sufferers is taken out and thrown in the general

category of seats, Serial No. 3 Kumari Vajanthi Sharma would get admission.

44. So far as the Petitioner is concerned, the above table shows that if the three seats which are given to the reserved category of political sufferers are thrown in the general category of seats, the first three students mentioned in the above table, namely, Suman Kaushal, Pradeep Kumar and Kumari Vajanti Sharma would get the chance of admission on merits. But the Petitioner Anil Nag would lag behind as his place is at Serial No. 5. He would get chance only if there are some more vacancies for some reason. But at present there is no material to show that there are vacancies which would entitle the Petitioner Anil Nag to admission even if these three reserved seats for political sufferers are show in the general category of seats.

45. That, however, would not mean that the points raised by the Petitioner in this writ petition should not be considered as contended by the learned Advocate-General, because the fact remains that if the three seats of the reserved category of political sufferers are available to the general category, and if there are further vacancies for any reason, the Petitioner Anil Nag is likely to get the chance of securing admission being at Serial No. 5.

46. In this connection, the learned Advocate-General put reliance upon the decision given by the Supreme Court in Suresh Vs. Vasant and Others, . In that case the Supreme Court has observed that the High Court while granting relief under Article 226 should keep in view that no injustice will cause to opposite parties and that the issue of writ will net be futile. The facts of that case show that reservation of certain percentage of seats for specified classes and categories was subsequently created and the qualification was lowered from 50 percent marks to 45 percent marks in aggregate. There the Petitioners did not challenge the reservations subsequently made and none of the Petitioners was falling within any of the categories of the reserved seats. The Supreme Court, therefore, held that since none of the Petitioners was to be benefited it was futile to issue any writ. The judgment shows that the Post-Graduate post for which the admission was to be made in that case was about to conclude and the Appellant before the Supreme Court was found attending that course and had appeared in all examinations. At the same time, none of the Respondents before the Supreme Court was eligible for admission on the basis of the qualification for students not belonging to reserved categories and none of them had been attending the course in question or appearing in the examination. The Supreme Court, therefore, found that if the order passed by the High Court in that case was to be carried out it would only mean that the Appellant would be deprived of the entire work which he had put in during the course of his studies whereas none of the Respondents could be qualified for any Post-Graduate Degree unless he started attending the course which would mean another period of two years. Under these circumstances, the Supreme Court found that it was futile to. issue any writ in that case. That decision is of no help to the Respondents so far as the instant case is concerned, because here we find that if two of the first three

students mentioned in the above table are not willing to get admission in the Medical College, the Petitioner would get the chance of admission. The facts of the present are more or less like the facts of the Supreme Court did not issue any writ in favour of the Petitioners it did go into the question of the validity of the reservations. We, therefore, decide point No. 7 accordingly.

47. Thus, for the reasons given above, we declare that the action of the Government in making reservations of three seats for the political sufferers out of the additional five seats sanctioned in the month of August 1978 is illegal and void in so far as the academic year 1978-79 is concerned and for this academic year these 5 additional seats should go to the general category of students of the Medical College thus augmenting the strength of this general category by five and making up its total upto 48.

48. It is further declared that the additional seats for political sufferers covered by emergency clause of the definition quoted above in Annexure PA is void as it infringes Article 14 of the Constitution, and that therefore also the seats reserved for the political sufferers should go to the general category.

49. As discussed above, even if the three seats reserved for the political sufferers for the year 1978-79 are accounted for towards the general category, the Petitioner Anil Nag is not found entitled to any relief as at present.

50. The decision to which we have arrived will not however, disturb the admission of the Intervener Rakesh Sood in the Medical College so long as any other candidate appears who may be held to be a rightful claimant for that seat from the general category as a result of our decision or in view of our observations made above.

51. The other reliefs claimed by the Petitioner stand rejected.

52. The rule is accordingly made absolute without any order as to costs.