
(2011) 08 SHI CK 0052
In the High Court Of Himachal Pradesh
Case No : CWP No. 4001 of 2011

Anupam Thakur and Others	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 16, 335

Citation : (2011) 08 SHI CK 0052

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.

CMP No. 5518/2011

1. Heard. The application is not opposed. Allowed. Priyanka Thakur is permitted to be added as Petitioner No. 4. Registry is directed to carry out necessary correction in the memo of parties. The application stands disposed of.

CWP No. 4001/2011

2. Core issue involved for adjudication in this petition is whether the action of the Respondent-State not to reserve seats for the candidates belonging to backward areas in I.G.M.C. Shimla is unconstitutional? Respondent No. 4-University issued prospectus on behalf of State of Himachal Pradesh for holding combined Pre-Medical Entrance Test for graduate (M.B.B.S./B.D.S.) courses in Himachal Pradesh for academic session 2011-2012. The last date for submission of application, as per prospectus, was 30.4.2011. It is evident from the prospectus issued by Respondent No. 4-University that no seats have been reserved for the candidates belonging to backward areas in I.G.M.C. Shimla. Two Seats have been reserved for this category in Dr. Rajinder Prashad Government Medical College, Tanda and H.P. Government Dental College, Shimla as notified by the H.P.

Government from time to time. Candidates belonging to the backward area must be permanent resident of that particular backward area and must have passed at least two examinations i.e. primary/middle/ matric/+1/+2 from the schools located in the backward area. If no such candidate is available then a candidate belonging to backward areas will be considered and in case no such candidate is available for the backward area's seat, the same will go to general category candidate. The "backward area", as per para 12 (iii) of the prospectus, means the backward as listed in the notification dated 16.6.1995 issued by the Financial Commissioner-Secretary (Planning) Government of Himachal Pradesh or areas as may be notified to be Backward Areas by the Government of Himachal Pradesh from time to time. In sequel to prospectus of Respondent No. 4, the written examination was held on 27.5.2011 and the result was declared on 3.6.2011. Petitioners No. 1 to 4 belong to backward area as defined under the prospectus. However, only Petitioner Shivani Thakur and Priyanka Thakur find their place in the combined merit list.

3. Mr. Bimal Gupta has strenuously argued that up to academic session 2009-2010, three seats were reserved always for backward area candidates in I.G.M.C. Shimla and also two seats are now reserved for this category in Dr. Rajinder Prashad Government Medical College, Tanda and H.P. Government Dental College, Shimla. His precise prayer is that mandamus be issued to the Respondent-State for providing three seats for candidates belonging to backward area and thereafter the Petitioners be considered accordingly. He also argued that the action of the Respondent-State of not providing reservation in I.G.M.C. Shimla and providing the same in Dr. Rajinder Prashad Government Medical College, Tanda and H.P. Government Dental College, Shimla is arbitrary, discriminatory, unreasonable and thus, violative of Articles 14 and 16 of the Constitution of India. He lastly contended that in Dr. Rajinder Prashad Government Medical College, Tanda the seats have also been increased from 60 to 100 as per Annexure R-7 dated 15.7.2011.

4. Mr. Vikas Rathore, learned Deputy Advocate General has argued that a policy decision has been taken by the State not to provide reservation for backward area candidates in I.G.M.C. Shimla after the seats have been increased from 65 to 100 and the zone of consideration is enlarged. According to him, Article 15 of the Constitution of India is enabling provision and no mandamus can be issued to the State Government to provide reservation for the candidates belonging to backward area in I.G.M.C. Shimla. He then contended that it is always open to the State Government to review periodically the reservation provided in educational institutions. He lastly contended that out of 551 Panchayats, only 11 Panchayats are backward area as per latest data provided to the Government.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. It is not in dispute that in academic session 2011-2012 as per prospectus issued, three seats reserved for the candidates belonging to backward area. Two

seats have been reserved for the category of backward area in Dr. Rajinder Prashad Government Medical College, Tanda and H.P. Government Dental College, Shimla, respectively. The State has only taken a decision not to provide three seats in I.G.M.C. Shimla for the candidates belonging to backward area. The result, as noticed above, was declared on 3.6.2011.

6. It is not in dispute that the reservation provided to the candidates belonging to backward area falls within the ambit of Article 15(4) of the Constitution of India. Their Lordships of the Hon''ble Supreme Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, have held that the backwardness contemplated under Article 15(4) is both social and educational. Article 15(4) speaks of backwardness of classes of citizens. Their Lordships have further held that since people in hill areas and Uttrakhand are socially and educationally backward classes of citizens and reservation of seats in their favour is constitutionally valid. Their Lordships have held as under :

14. Article 15(4) speaks of socially and educationally backward classes of citizens. The State described the rural, hill and Uttrakhand areas as socially and educationally backward-areas. The Constitution does not enable the State to bring socially and educationally backward areas within the protection of Article 15(4). The Attorney General however, submitted that the affidavit evidence established the rural, hill and Uttrakhand areas to have socially and educationally backward classes of citizens. The backwardness contemplated under Article 15(4) is both social and educational. Article 15(4) speaks of backwardness of classes of citizens. The accent is on classes of citizens. Article 15(4) also speaks of Scheduled Castes and Scheduled Tribes. Therefore, socially and educationally backward classes of citizens in Article 15(4) could not be equated with castes. In *M.R. Balaji and Others Vs. State of Mysore*, and *State of Andhra Pradesh and Another Vs. P. Sagar*, this Court held that classification of backwardness on the basis of castes would violate both Articles 15(1) and 15(4).

15. Broadly stated, neither caste nor race nor religion can be made the basis of classification for the purposes of determining social and educational backwardness within the meaning of Article 15(4). When Article 15(1) forbids discrimination on grounds only of religion, race, caste, caste cannot be made one of the criteria for determining social and educational backwardness. If caste or religion is recognised as a criterion of social and educational backwardness Article 15(4) will stultify Article 15(1). It is true that Article 15(1) forbids discrimination only on the ground of religion, race, caste, but when a classification takes recourse to caste as one of the criteria in determining socially and educationally backward classes the expression "classes" in that case violates the rule of *expressio unius est exclusio alterius*. The socially and educationally backward classes of citizens are groups other than groups based on caste.

16. The expression "socially and educationally backward classes" in Article 15(4) was explained in *M.R. Balaji and Others Vs. State of Mysore*, to be comparable to Scheduled Castes and Scheduled Tribes. The reason is that the Scheduled Castes

and Scheduled Tribes illustrated social and educational backwardness. It is difficult to define the expression "socially and educationally backward classes of citizens." The traditional unchanging occupations of citizens may contribute to social and educational backwardness. The place of habitation and its environment is also a determining factor in judging the social and educational backwardness.

7. Their Lordships of the Hon'ble Supreme Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, have again reiterated that reservation based on geographical classification of backward regions is permissible under Article 15(4) of the Constitution of India. Their Lordships have held as under :

11. The principle of reservation with weightage for the geographical area of the Malabar District has our approval in endorsement of the view of the High Court. An earlier decision of the Kerala High Court, *State of Kerala and Another Vs. R. Jacob Mathew and Others*, gave rise to a Commission appointed to recommend which sections of the people required special treatment under Article 15(4) of the Constitution, having regard to their social and educational conditions. That Commission, inter alia accepted the educational backwardness of the Malabar area and recommended equitable allocation of seats on that footing. Substantially founding itself on these recommendations but modifying them in some measure Government hammered out a formula, a basic feature of which was pooling together the applications for admission to the four medical colleges in the State in one consolidated list and selecting students for medical courses strictly according to the marks secured-of course, making allowance for seats reserved for a limited percentage of students from outside and the customary bonus of reservation of seats for Scheduled Castes, Scheduled Tribes and backward classes. This part of the "selection calculus" is beyond cavil before us, as the nation with all its social engineering boasts and all its tumultuous bungling, is distances away from human justice through human law. The rough and tumble of academic life, based on the pooling System seemed to run smooth for some years when a new attack was mounted on it in the High Court with constitutional artillery from the inexhaustible armoury of Article 14. A Full Bench hit the scheme fatally this time, not with the familiar but fruitless archery of geographical discrimination but with the weaponry of "reverse discrimination" in a different manifestation.

8. Their Lordships of the Hon'ble Supreme Court in *Indira Sawhney and Ors. v. Union of India*, 1992 Supp (3) SCC 217 have held that every reservation must be made with a view to its early termination on the successful accomplishment of its object. Their Lordships have held as under : 229. The identification of the backward classes by the Mandal Commission is not with a seal of perpetual finality but on the other hand it is subjected to reviewability by the government. The Mandal Commission itself in paragraph 13.4U in Ch. XIII has suggested that "the entire scheme should be reviewed after 20 years". Mr Jethmalani suggested that the list may be reviewed at the interval of 10 years. There are judicial pronouncements to the effect that the government has got the right of

reviewability. There cannot be any controversy indeed there is none - that the government which is certainly interested in the maintenance of standards of its administration, possesses and retains its sovereign authority to adopt general regulatory measures within the constitutional framework by reviewing any of its schemes or policies. The interval of the period at which the review is to be held is within the authority and discretion of the government, but of course subject to the constitutional parameters and well settled principles of judicial review. Therefore, it is for the government to review the lists at any point of time and take a decision for the exclusion of any pseudo community or caste smuggled into the backward class or for inclusion of any other community which in the opinion of the government suffers from social backwardness.

299. Dr. Ambedkar was unequivocal when he declared that reservation must be confined to a minority of the available posts, lest it should destroy the very concept of equality and thus undermine democracy. Any excessive reservation or any unnecessarily prolonged reservation will result in invidious discrimination. What exactly is the total percentage of reservation at a given time is a matter for the State to decide, dependent on the need of the time. But in no case shall reservation overstep the strict boundaries of minority of seats or posts or outlast the reason for it. It must remain well below 50% of available seats or posts. Every reservation must be made with a view to its early termination on the successful accomplishment of its object.

422. Under the Constitution, the reservations in employment in favour of backward classes are not intended either to be indiscriminate or permanent. Article 16(4) which provides for reservations, also at the same time prescribes their limits and conditions. In the first place, the reservations are not to be kept in favour of every backward class of citizens. It is only that backward class of citizens which, in the opinion of the State, is "not adequately represented" in the services under the State, which is entitled to the benefit of the reservations. Secondly, and this follows from the first, even that backward class of citizens would cease to be the beneficiary of the reservation policy, the moment the State comes to the conclusion that it is adequately represented in the services.

9. The decision not to provide reservation to the candidates belonging to backward areas in the prospectus has been taken by the Cabinet in its meeting held on 16.3.2010. The record was produced before the Court. It is evident from the perusal of the record that a policy decision has been taken by the State not to provide reservation of any seats in I.G.M.C. Shimla for the candidates belonging to backward area as the seats have been increased from 65 to 100. In other words, more seats have become available to the candidates belonging to all the categories. The reasons assigned in the Cabinet have also been supplement in the reply filed by the Respondent-State. According to the Respondent-State, the areas, which were traditionally backward, large scale developmental activities have taken place in these areas and number of the Panchayats which were declared backward have now drastically reduced.

However, in order to provide reservation to the candidates belonging to backward areas, they have been given due representation in Dr. Rajinder Prashad Government Medical College, Tanda and H.P. Government Dental College, Shimla by providing two seats each. It has come in the reply that out of 551 Panchayats only 11 Panchayats have remained as backward Panchayats as per the norms prescribed. The fact of the matter is that the number of backward Panchayats has drastically reduced from 551 to 11 with the modernization of the rural areas. Socially and educationally backward classes of citizens were one of the parameters for including backward area to provide reservation to the candidates belonging to these areas. To counter this stand of the State Government, Mr. Bimal Gupta, learned Counsel appearing on behalf of the Petitioners submitted that now the seats have also been increased from 65 to 100 in Dr. Rajinder Prashad Government Medical College, Tanda. However, the fact of the matter is that no corresponding seats have been increased belonging to backward areas as far as this institution is concerned. It is for the State Government to take a policy decision with regard to extent and mode of reservation in educational institutions. The scope of judicial review in these matters is very limited. The Court is to ensure while reviewing the policy decision that it should be constitutional and should not be de hors the provisions of the Act and Regulations and the executive policy should not be against the statutory rules or larger policy. In the instant case, the decision has taken by the State Government, cannot be termed as unconstitutional as neither the same is de hors the Act nor against the Regulations. The action of the State not to provide reservation in I.G.M.C. Shimla for the candidates belonging to backward area and to provide the same in remaining educational institutions can neither be termed as discriminatory nor arbitrary or unreasonable. The admission to M.B.B.S. and other professional courses should be based on merit. Now, the State has gone for a periodical review on the basis of the data available before it not to provide any reservation for the candidates belonging to backward area in I.G.M.C. Shimla after the increase of seats.

10. It is no more res integra that the provisions under Articles 15(4) and 16(4) are enabling provisions. The Court cannot issue any mandamus to the State Government to provide reservation. Their Lordships of the Hon'ble Supreme Court in *Ajit Singh and Others Vs. The State of Punjab and Others*, have held that Articles 16(4) and 16(4-A) do not confer any fundamental right and are enabling provisions. Their Lordships have further held that there is marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4-A) on the other. There is no directive or command in Article 16(4) or Article 16(4-A) as in Article 16(1). Both Articles 16(4) and 16(4-A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provisions vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those Articles so warrant. Their Lordships have further held that it is not possible to accept the view that Article 16(4) and Article 16(4-A) confer a power coupled

with a duty. Article 16(4) confers a discretion and does not create any constitutional duty or obligation. Their Lordships have further held that the view in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches. Their Lordships have held as under :

28. We next come to the question whether Article 16(4) and Article 16(4A) guaranteed any fundamental right to reservation. It should be noted that both these Articles open with a non-obstante clause - "Nothing in this Article shall prevent the State from making any provision for reservation....." There is a marked difference in the language employed in Article 16(1) on the one hand and Article 16(4) and Article 16(4A). There is no directive or command in Article 16(4) or Article 16(4A) as in Article 16(1). On the face of it, the above language in each of Articles 16(4) and 16(4A), is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963.

31. Unfortunately, all these rulings of larger Benches were not brought to the notice of the Bench which decided *Ashok Kumar Gupta and Another Vs. State of U.P. and Others*, and *Jagdish Lal and others Vs. State of Haryana and others*, and to the Benches which followed these two cases. In view of the overwhelming authority right from 1963, we hold that both Articles 16(4) and 16(4A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provision vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those Articles so warranted. We accordingly hold that on this aspect *Ashok Kumar Gupta, Jagdishlal* and the cases which followed these cases do not lay down the law correctly.

32. Learned senior counsel for the reserved candidates, Sri. K. Parasaran however contended that Article 16(4) and Article 16(4A) confer a power coupled with a duty and that it would be permissible to enforce such a duty by issuing a writ of mandamus. Reliance for that purpose was placed upon *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, and also on *Julius v. (Lord Bishop) (1880) 5 AC 214* which case was followed by this Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*. We are unable to agree with the above contention. As pointed out earlier, the Constitution Bench of this Court in *C.A. Rajendran Vs. Union of India (UOI) and Others*, held that Article 16(4) conferred a discretion and did not create any constitutional duty or obligation. In fact, in that case, a mandamus was sought to direct the Government of India to provide for reservation under Article 16(4) in certain Class I and Class II services. The Government stated that in the context of Article 335 and in the interests of efficiency of administration at those levels, it was of the view that there should

be no reservation. The said opinion of the Government was accepted by this Court as reasonable and mandamus was refused. Even in *M.R. Balaji and Others Vs. State of Mysore*, the Constitution Bench declared that Article 16(4) conferred only a discretion. It is true that in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, the three Judge Bench issued a mandamus, after referring to Article 142, that the Government must add 25 marks to SC/ST candidates who had taken the S.A.S. Examination for promotion as Sections Officers and also that, in future, a reduced minimum marks must be provided and announced before the examination. The Court also observed that the Department had not passed orders as per a general O.M. of the Government dated 21-9-1977. But the attention of the Court was not drawn to the judgment of the Constitution Bench in *C.A. Rajendran's* case and other cases to which we have referred earlier. Further, if the State is of the opinion that in the interests of efficiency of administration, reservation or relaxation in marks is not appropriate, then it will not be permissible for the Court to issue a mandamus to provide for reservation or relaxation. We also note that in *Superintending Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh and others*, ; *Jagannathan's* case was followed and reference was made to Article 16(4) and Article 16(4A) and to the principle that where a power is coupled with a duty as in *Julius v. Lord Bishop and Commissioner of Police v. Gordhandas Bhanji*, the same could be enforced by the Court. But we may point out that even in *Kuldeep Singh's* case, no reference was made to *C.A. Rajendran* and other cases. We, accordingly, hold that the view in *Jagannathan* and *Kuldeep Singh's* cases that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be said to be laying down the correct law.

11. Their Lordships of the Hon'ble Supreme Court in *Union of India (UOI) Vs. R. Rajeshwaran and Another*, have held that like Article 16(4), Article 15(4) confers a discretion and does not create any constitutional duty and obligation. Their Lordships have held that no mandamus can be issued either to provide for reservation or for admission to Universities. Their Lordships have held as under :

9. In *Ajit Singh and Others Vs. The State of Punjab and Others*, , this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. Language of Article 15(4) is identical and the view in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, , and *Superintending Engineer, Public Health v. Kuldeep Singh*, JT 1997 (2) SC 508, that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier constitution benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the Respondent in the present case could have sought for a direction nor could the High Court have granted the same.

12. Their Lordships of the Hon''ble Supreme Court in E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, have held that reservation to backward class is not a constitutional mandate. It is the prerogative of the State concerned if it so desire, with an object of providing opportunity of advancement in the society to certain backward classes which includes the Scheduled Castes to reserve certain seats in educational institutions under Article 15(4) and in public services of the State under Article 16(4).

13. Mr. Bimal Gupta has put strong reliance on Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, that a mandamus can be issued to the State to make reservation. However, in the case cited hereinabove, i.e. Ajit Singh and Others Vs. The State of Punjab and Others, the Apex Court has held that this judgment runs counter to judgments of earlier Constitutional Benches and thus, mandamus cannot be issued.

14. Their Lordships of the Hon''ble Supreme Court in A.P. Public Service Commission Vs. Baloji Badhavath and Others, have held that nobody has fundamental rights to be appointed in terms of Article 16 of the Constitution of India. Their Lordships have further held that provisions contained in Articles 15 and 16 are merely enabling provisions, thus, no writ of mandamus can be issued. Their Lordships have held as under :

18. The Constitution of India lays down provisions both for protective discrimination as also affirmative action. Reservation of posts for the disadvantaged class of people, as also seats in educational institutions are provided for by reason of Articles 15 and 16 of the Constitution of India. Reservation made for the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes would, however, be subject to Article 335 of the Constitution of India. Concededly, no citizen of India can claim reservation as a matter of right. The provisions contained in Articles 15 and 16 of the Constitution of India are merely enabling provisions. No writ of or in the nature of mandamus, thus, could be issued. See C.A. Rajendran Vs. Union of India (UOI) and Others, Indra Sawhney and Ors. v. Union of India and Ors. 1992 (Supp. 3) SCC 217 , Ajit Singh and Others Vs. The State of Punjab and Others, , State of Punjab and Others Vs. Manjit Singh and Others,

25. How the Commission would judge the merit of the candidates is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the superior courts would not ordinarily interfere therewith. The State framed Rules in the light of the decision of the High Court in S. Jafeer Saheb (supra). Per se, it did not commit any illegality. The correctness of the said decision, as noticed hereinbefore, is not in question having attained finality. The matter, however, would be different if the said rules per se are found to be violative of Article 16 of the Constitution of India. Nobody has any fundamental right to be appointed in terms of Article 16 of the Constitution of India. It merely provides for a right to be considered therefore. A procedure evolved for laying

down the mode and manner for consideration of such a right can be interfered with only when it is arbitrary, discriminatory or wholly unfair.

15. Similarly, their Lordships of the Hon''ble Supreme Court in *Nair Service Society Vs. Dr. T. Beermasthan and Others*, have held that reservation provisions are enabling provisions and the Government is not bound to make a reservation and it is not for the Court to look into wisdom of the method adopted for reservation. Their Lordships have held as under :

48. Several decisions have been cited before us by the Respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.

55. It may be mentioned that reservation provisions are enabling provisions. In other words, the State is not bound to make a reservation, but it is empowered to do so in its own discretion vide *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, . In paragraph 102 of the said judgment, the Constitution Bench of this Court observed : "The impugned constitution amendments are enabling in nature. They leave it to the States to provide for reservation."

56. The same view has been taken in paragraphs 107 and 123 of the aforesaid decision.

45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition.

16. Their Lordships of the Hon''ble Supreme Court in *Dr. Gulshan Prakash and Others Vs. State of Haryana and Others*, have held that power of State to make reservation under Article 15(4) is discretionary and not mandatory. Their Lordships of the Hon''ble Supreme Court have further held that no writ can be issued directing the State to make reservation. Their Lordships have reiterated that Article 15(4) is enabling provision. Their Lordships have held as under :

9. Article 15 mandates that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Sub-clause (4) in both Articles 15 and 16 is only an enabling provision for the State Government to bring forward a legislation or pass an executive order for

the benefit of socially and educationally Backward Classes of citizens and for the Scheduled Castes and Scheduled Tribes. Article 15(4) reads as follows :

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

11. On the other hand, the consistent view of this Court is that Article 15(4) is only an enabling provision and it is for the respective States either to enact a legislation or issue an executive instruction providing reservation in Post-Graduate Courses.

16. The principle behind Article 15(4) is that a preferential treatment can be given validly when the socially and educationally backward classes need it. This article enables the State Government to make provisions for upliftment of Scheduled Castes and Scheduled Tribes including reservation of seats for admission to educational institutions. It was also held that Article 15(4) is not an exception but only makes a special application of the principle of reasonable classification. Article 15(4) does not make any mandatory provision for reservation and the power to make reservation under Article 15(4) is discretionary and no writ can be issued to effect reservation. Such special provision may be made not only by the Legislature but also by the Executive.

30. As stated earlier, Article 15(4) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class categories at Post-Graduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the Post-Graduate level suffers no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. under graduate level, then it does not mean that it is bound to grant reservation at the Post-Graduate level also.

17. Their Lordships of the Hon"ble Supreme Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, have reiterated that the State is not bound to make reservation for Scheduled Caste/Scheduled Tribes for promotion. Their Lordships have further held that Articles 16(4) and 16(4-A) are enabling provision in nature.

18. Their Lordships of the Hon"ble Supreme Court in *Jagdish Negi and another Vs. State of U.P. and another*, have held that it is not possible to agree that reservation should continue without any limitation or there cannot be periodical review about the reservation policy. Their Lordships have further held that State cannot be bound in perpetuity to treat such classes of citizens for all time as socially and educationally backward classes of citizens. However, their Lordships have held that the action of the State to provide reservation in medical colleges but to deny it in agricultural was unconstitutional.

19. What emerges from the above cited judgments is that it is open to the State Government to review reservation periodically. However, their Lordships have not gone into the question whether the policy could be enforced by the Court of law against the State. Mr. Bimal Gupta has placed strong reliance on Secretary, Cannanore District Muslim Educational Association, Karimbam v. State of Kerala and Ors. (2010) 6 SCC 373. According to him, this Court can see whether the policy decision is constitutional or not.

20. The Court has already noticed that the decision not to provide reservation in I.G.M.C. Shimla has been taken on the basis of increase of seats from 65 to 100 and also by taking into consideration that the number of backward Panchayats has now drastically reduced as out of 551 backward Panchayats, only 11 Panchayats are backward.

21. Mr. Bimal Gupta has also relied upon Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, . According to him, it is always open to the Court to review the decision making process.

22. In the case in hand, cogent and convincing reasons have been given by the Respondents while changing the policy by not making reservation in I.G.M.C. Shimla for candidates belonging to backward area. The Court has gone into the record produced before it whereby the decision was taken by the Cabinet and supplemented in the reply filed by the Respondent-State.

23. The Apex Court, as noticed above, in Jagdish Negi's case (supra) has held that it is open for the State Government to extend reservation periodically even on year to year basis. The areas which were backward in the year 1995 at the time of issuance of notification have become advance with the passage of time. It is not that now the State Government has done away with the reservation for the candidates belonging to backward area lock, stock and barrel, but it has been confined to two institutions, i.e. Dr. Rajinder Prashad Government

Medical College, Tanda and H.P. Government Dental College, Shimla.

24. What emerges from the observations and discussions made hereinabove is that State Government has continued to provide reservation for the candidates belonging to backward area as far as two institutions are concerned, namely, Dr. Rajinder Prashad Government Medical College, Tanda and H.P. Government Dental College, Shimla. There is no unconstitutionality in the policy decision of the State Government to do away with the reservation for the candidates belonging to backward areas in I.G.M.C. Shimla. The Court cannot issue any mandamus for providing reservation of seats to the candidates belonging to backward areas in I.G.M.C. Shimla. It is for the State Government to provide or not to provide reservation in any educational institution.

25. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.