

(2017) 10 AP CK 0002
In the Andhra Pradesh High Court
Case No : 21836 of 2017

A.Sateesh Reddy and others

APPELLANT

Vs

The Rajiv Gandhi University of Knowledge Technologies and
others

RESPONDENT

Date of Decision : 04-10-2017

Acts Referred:

Constitution of India, Article 14, Article 15, Article 15(1), Article 15(4), Article 371(D) -
Appointment of Commission to inquire in

Citation : (2017) 10 AP CK 0002

Hon'ble Judges : Ramesh Ranganathan, M.Ganga Rao

Bench : DIVISON BENCH

Advocate : P.Veerabhadra Reddy, M.Vidyavathi

Final Decision : Allowed

Judgement

1. Six students, who were denied admission, have invoked the jurisdiction of this Court seeking admission into the six year integrated B.Tech programme in IIITs for the academic year 2017- 18 on the basis of the GPA score secured by them in the 2017 SCC examinations. They have sought a writ of Mandamus to declare Statute 13(3) made under the Rajiv Gandhi University of Knowledge Technologies Act, 2008 (for short the Act), and the procedure prescribed by the respondents for selection of candidates for admission into the six year integrated B-Tech programme for the academic year 2017-18, as illegal, contrary to the provisions of the Presidential Order, and in violation of Articles 14, 15 and 371(D) of the Constitution of India, and to strike down the same.

2. The respondent-University (Rajiv Gandhi University of Knowledge Technologies) hitherto framed Statute 13(3) under the Act whereby a rural unit of a mandal was stipulated as a local unit of reservation in respect of a local candidate. The eligibility criteria, prescribed in the then Statute 13, required the institute to be fully residential, and to be primarily catering to the educational

needs of the meritorious rural youth of Andhra Pradesh. The admission process was to be on a local basis with a rural mandal as a unit, allowing for established reservation norms. Merit, among the applicants, was to be determined on the basis of the marks secured by them in the Secondary School Certificate (10th standard) examination. Questioning the validity of Statute 13(3) of the Act, two students had invoked the jurisdiction of this Court and a Division Bench, by its order in *Mudavathu Nagraju vs. The Government of Andhra Pradesh*, struck down Statute 13(3) as violative of the Presidential Order, made under Article 371-D of the Constitution of India, as it did not accommodate the States power to identify or specify a mandal or a rural mandal as a distinct local area; the specification in Statute 13(3) of a rural mandal, as the unit for determination presumptively of a local candidate, was in transgression of the contours of the expression local candidate and local area clearly and unambiguously specified and defined in the Presidential Order; and as the State had neither the legislative nor the complementary executive power to enact a law nor to issue orders or other instruments as to have the effect of transgressing the provisions of the Presidential Order, and since the provisions of Statute 13(3) clearly transgressed the provisions of the Presidential Order, Statute 13 was incompetent and ab inito void.

3. On the earlier Statute 13(3) being struck down by this Court, the respondent-university amended Statute 13. Statute 13(3), after its amendment, reads thus: Admission to the six year integrated engineering course shall be based on the 10th class marks of each applicant. A deprivation score, as prescribed by Government from time to time in terms of percentage marks, may be added to the 10th class marks of the applicants from the non-residential government schools, including zilla parishad and municipal schools, with the objective of providing weightage to the socio economically challenged students.

4. The incentive/concession, of a deprivation score being added to the 10th class marks of any applicant who studied in (i) non- residential government schools (ii) zilla parishad schools, and (iii) municipal schools, is said to have been extended with the objective of providing weightage to the socio-economically challenged students. In effect a candidate who secured a score of 9.9 in the 10th class examination, having studied either in a residential government school or in an aided or unaided private school, would have to yield place to a candidate, who despite having secured a lower GPA score of 9.6 in the 10th class examination would, by the fortuitous circumstance of his having studied in a non-residential government/zilla parishad/municipal school, now secure a score of 10 as the deprivation score of 0.4 would, because of Statute 13(3), be added to his 10th Class GPA score.

5. Sri P.Veerabhadra Reddy, learned counsel for the petitioners, would submit that Statute 13(3) violates Articles 14, 15 and 371-D of the Constitution of India; classification of students between those who passed out from residential government schools, aided and unaided private schools on the one hand, and

those who passed out from non-residential government, zilla parishad and municipal schools on the other, violates the equality clauses in Articles 14 and 15(1) of the Constitution of India; and such a classification has no nexus to the object sought to be achieved which, as stated in the counter-affidavit, is to encourage students, who studied in non-residential government/zilla parishad/municipal schools, to secure admission in the six year integrated engineering course offered by the respondent-university, and to provide concessions to the socio-economically challenged students, which is impermissible under the Constitution of India. Learned counsel would rely on *Mudavathu Nagraju*¹ and *Sandeep vs. Union of India* in this regard.

6. On the other hand Ms.M.Vidyavathi, learned Standing Counsel for the respondent-university, would submit that the concession extended by the respondent-university cannot be equated to reservation provided in favour of the socially and educationally backward classes; the respondent-university is providing reservation of 50% of the total number of available seats in favour of the Scheduled Castes, the Scheduled Tribes, and the other Backward Classes; Statute 13(3) was made only after a detailed and scientific study of the data collected from the year 2011 onwards regarding the category of students who were able to secure admission into the six year integrated engineering course; an analysis of the data revealed that students, from non-residential government/zilla parishad and municipal schools, were unable to compete with students from residential government schools, aided and unaided private schools; the preamble to the Act shows that the University was constituted to provide an opportunity for rural students who are economically inadequate compared to their urban counterparts; the concession in Statute 13(3) was prescribed only to enable such students to secure admission into the six year integrated engineering course; the respondent-university has not violated the Presidential Order; local area reservation of 85% of the available seats, as stipulated in the Presidential Order, is being provided to students from the S.V. University area within whose jurisdiction the respondent-University falls; the remaining 15% seats are left open for students both from the States of Andhra Pradesh and Telangana; this concession, prescribed in Statute 13(3), is being extended to students, in addition to the reservation provided in favour of the socially and educationally backward classes (SC, ST and OBC); and Statute 13(3) does not fall foul of Articles 14, 15 and 371-D of the Constitution of India or the Presidential Order made thereunder. Learned counsel would rely on *State of M.P. vs. Gopal D.Tirthani* , *State of Uttar Pradesh vs. Pradip Tandon* , *Satyabrata Sahoo vs. State of Orissa* , *State of Uttar Pradesh vs. Dinesh Singh Chauhan* and *Neeraj Kumar Sainy vs. State of U.P.* .

7. Just as Article 14 permits classification, so does Article 15(1) which is but a facet of the rule of equality in Article 14. Article 15(4) of the Constitution of India enables a State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes. For bringing about and ensuring equality, appropriate

measures, including reservations, can be adopted. What kind of special provision should be made in favour of a particular class is a matter for the State to decide having regard to the facts and circumstances of a given situation. (Ajay Kumar Singh v. State of Bihar ; Indra Sawhney v. Union of India). The word "any", and the associated word special provisions must be given their due meaning. (Indra Sawhney9). The words any special provision in Article 15(4) are of wide amplitude (Ajay Kumar Singh8), and are not mere surplusage. (Indra Sawhney9).

8. Reservations can take various forms. They may consist of preferences, concessions, exemptions, extra facilities etc or of an exclusive quota. Reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The larger concept of reservation takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions. Concessions, exemptions and other measures are supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e to ensure that the members of the reserved class fully avail of the provision for reservation in their favour. There is no reason why such special provisions should not be held to be included within the larger concept of reservation. (Indra Sawhney9).

9. When measures, other than an exclusive quota, are adopted, they form part of the reservation measures or are ancillary to or necessary for availing the reservations. Whatever the form of reservation, the backward classes have to look for them to Article 15(4). (Indra Sawhney9). Where the State finds it necessary - for the purpose of giving full effect to the provision of reservation to provide certain exemptions, concessions or preferences to the members of backward classes, it can extend the same under Clause (4). All supplemental and ancillary provisions to ensure full availment of the provisions for reservation can be provided as part of the concept of reservation itself. Similarly, in a given situation, the State may think that, in the case of a particular backward class, it is not necessary to provide reservation, and it would be sufficient if a certain preference or a concession is provided in their favour. This can be done under Clause (4). (Indra Sawhney9).

10. The socially and educationally backward classes, having been classified by the Constitution itself as a class deserving special treatment, and the Constitution having itself specified the nature of special treatment, it should be presumed that no further classification or special treatment is permissible in their favour apart from or outside of clause (4). (Indra Sawhney9). The submission of Ms. M. Vidyavathi, learned Standing Counsel, that Statute 13(3) of the Act does not provide for reservation but only extends certain incentives/concessions for students, who had passed their 10th class examination from non-residential government/ zilla parishad/ municipal schools in the State, is of no avail as incentives/concessions are ancillary to reservation, and can only be provided if they fall within the ambit of Article 15(4) of the Constitution.

11. Let us now refer to the judgments which Ms. M. Vidyavathi, Learned Standing

Counsel for the respondent-university, has relied upon. In Pradip Tandon⁴, certain colleges in Uttar Pradesh, under the Meerut University, had reserved seats in medical courses for students from rural areas, for students from hill areas, and for students from the Uttarakhand area, besides providing reservation for the Scheduled Castes, the Scheduled Tribes etc. The reservation, provided in favour of students from rural, hill and Uttarakhand areas, was subjected to challenge as being unconstitutional. Before the Supreme Court, it was contended that rural India was socially and educationally backward because of poverty; rural people had common traits of agriculture, and they were conditioned by economic poverty; and the State was obligated to promote, with special care, the educational and economic interests of the weaker sections of the people. It is in this context that the Supreme Court observed:-

12. Article 15(4) speaks of socially and educationally backward classes of citizens. The State described the rural, hill and Uttarakhand 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 Uttarakhand 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 & Ors. v. State of Mysore* [1963] Supp. 1 S.C.R. 439 and *State of Andhra Pradesh & Anr. v. P. Sagar* [1968] 3 S.C.R. 595 this Court held that classification of backwardness on the basis of castes would violate both Articles 15(1) and 15(4).

13. The expression "socially and educationally backward classes" in Article 15(4) was explained in *Balaji*'s case (supra) 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 continue to social and educational backwardness. The place of habitation and its environment is also a determining factor in judging the social and educational backwardness.

14. The expression "classes of citizens" indicates a homogeneous section of the people who are grouped together because of certain likeliness and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens.

15. The traits of social backwardness are these. There is no social structure. There is no social hierarchy. There are no means of controlling the environment

through technology. There is no organization of the society to create inducements for uplift of the people and improvement of economy. Building of towns and industries, growth of cash economy which are responsible for greater social wealth are absent among such classes. Social growth and well being can be satisfied by massive change in resource conditions. High lands "and hills are to be developed in fiscal values and natural resources. Nature is a treasury. Forests, mountains, rivers can yield an advanced society with the aid of education and technology.

16. The hill and Uttrakhand areas in Uttar Pradesh are instance of socially and educationally backward classes of citizens for these reasons. Backwardness is judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the element of social backwardness is observed. When effective territorial specialisation is not possible in the absence of means of communication and technical processes as in the hill and Uttrakhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people.

17. Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttrakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttrakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education.

18. The 1971 Census showed population in India to be 54.79 crores. 32-89 crores or 80.1 per cent live in rural areas. 10.91 crores or 43.9 per cent live in cities and towns. In 1921 the rural population in India was 88.8 per cent. In 1971 the rural population was reduced to 80.7 per cent. The rural population of Uttar Pradesh in 1971 was roughly seven and a half crores. The population in Uttrakhand was roughly seven and a half lakhs. The population of Hill areas in Uttar Pradesh was near about twenty-five lakhs. It is in- comprehensible as to how 80.1 per cent of the people in rural areas or 7 crores in rural parts of Uttar Pradesh can be suggested to be socially backward because of poverty. Further, it is also not possible to predicate poverty as the common trait of rural people. This Court in *J. P. Parimoo v. State of Jammu & Kashmir* [1973] 3 S.C.R. 236 said that if poverty is the exclusive test a large population in our country would be socially and educationally backward class of citizens. Poverty is evident everywhere and perhaps more so in educationally advanced and socially affluent classes. A division between the population of our country on the ground of poverty that the

people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people on the other that the rural people are socially and educationally backward class.

19. Some people in the rural areas may be educationally backward, some may be socially backward, there may be few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.

20. On behalf of the State it is said that it is necessary to have reservation of seats for the people from rural areas in order to attract people from those areas who are otherwise handicapped in the matter of education, so that they can serve the people in the rural areas on completion of their medical education. In order to attract medical men for service in rural areas arrangements are to be made to attract them. The special need for medical men in rural areas will not make the people in the rural areas socially and educationally backward classes of citizens (emphasis supplied).

21. As held in *Pradip Tandon*⁴, the Constitution does not enable the State to bring socially and educationally backward areas within the protection of Article 15(4). While the backwardness contemplated is both social and educational, the accent under Article 15(4) is on classes of citizens and not on areas or places. The "socially and educationally backward classes" in Article 15(4) are those comparable to the Scheduled Castes and the Scheduled Tribes as they illustrate social and educational backwardness. The expression "classes of citizens" indicates a homogeneous section of the people who are grouped together because of certain likeliness and common traits, and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. The traits of social backwardness are that there is no social structure, there is no social hierarchy, and there is no organization of the society to create inducements for upliftment of the people and improvement of the economy. Where people have traditional apathy for education, on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness.

22. The premise on which Statute 13(3) is based, that students studying in non-residential government/zilla parishad/municipal schools are socio-economically challenged is flawed. When a question arises, whether a law, which prima facie infringes a guaranteed fundamental right under Article 15(1), is protected by Article 15(4), the validity of that law has to be determined by Courts on the material placed before it. (*State of A.P. v. P. Sagar*). The test of the validity of a law, alleged to infringe the fundamental rights of a citizen or any act done in execution of that law, lies not in the belief of the maker of the law or of the person executing the law, but in the demonstration by evidence before Courts that the guaranteed right is not infringed. (*P. Sagar*¹⁰).

23. In its counter-affidavit, the respondent-University states that it found students from non-residential government/zilla parishad/ municipal schools to be backward on the ground of socio-economic backwardness; the respondent-University had taken into consideration the social background of the students whoever prosecuted their education in non-residential government schools including Zilla Parishad/Municipal Schools etc, and had therefore added a deprivation score of upto 0.4 to the GPA of the students; and this was done with the object of providing weightage to these deprived classes of students, who were socio-economically challenged. No material has been placed by the respondents before this Court to show that all students who are studying in non-residential government/zilla parishad/municipal schools form a homogeneous class grouped together because of certain likeliness and common traits, and who are identifiable by some common attributes. Neither is every student, who studies in such schools, socially backward nor is there any basis for the respondents to conclude that students, studying in such schools, are all economically backward.

24. The object of Statute 13(3), as has been explicitly stated therein, is to provide weightage to the socio-economically challenged students. While the expression socio-economically challenged is ambiguous, the State cannot merely, by adding the word socio to the words economically challenged, provide reservation or make special provisions in the form of concessions/incentives for the economically backward sections of society, as what is permitted by Article 15(4) of the Constitution of India is for the State to make special provisions for the advancement of only the socially and educationally backward classes, the scheduled castes and the scheduled tribes and not any other class of citizens even if they be economically backward. While economic backwardness cannot form the basis of concessions or reservations under Article 15(4), the presumption by the State that all the students, studying in such schools, are economically backward is also not based on any verifiable data.

25. A contention, more or less identical to the one raised before us, (that the number of marks obtained by candidates from non- residential government/zilla parishad/municipal schools showed that they lagged behind in their ability to secure more marks vis-a- vis students studying in residential government schools and private aided and unaided schools) was also urged in Pradip Tandon⁴, and the Supreme Court observed: It was said that the number of marks obtained by candidates from rural areas showed that they were much lower than the marks obtained by general candidates and this would indicate educational backwardness. That is neither a valid nor a justifiable ground for determining social and educational backwardness. Educational institutions should attract the best talents. It has been held by this Court in Balaij's case (supra) that 50 per cent of the seats in educational institutions should be left open to general competition. in the present case, it appears that 85 candidates from rural areas were selected in the general seats. One candidate from Uttrakhand area, 7 candidates from hill areas and one Scheduled Caste candidate also completed for

the general seats. The candidates from hill areas, Uttarakhand Division and Scheduled Castes are exceptions and their performance will not detract from the reservations for Scheduled Caste, bill and Uttarakhand areas. The performance of 85 candidates from rural areas speaks eloquently for the high standards of education in rural areas.

26. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. 80 per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article.

27. The onus of proof is on the State to establish that the reservations are for socially and educationally backward classes of citizens. The State has established that the people in hill and Uttarakhand areas are socially and educationally backward classes of citizens.. (emphasis supplied).

28. As held in *Pradip Tandon*⁴, it is not possible to predicate poverty as the common trait of rural people. If poverty was the exclusive test, a large population in our country would be socially and educationally backward class of citizens. Poverty is evident everywhere, and perhaps more so in educationally advanced and socially affluent classes. A division between the population of our country on the ground of poverty, that people in urban areas are not poor and those in rural areas are poor, is neither supported by facts, nor by a division between urban people on the one hand and rural people on the other that all rural people are socially and educationally backward. Some people in rural areas may be educationally backward, some may be socially backward, there may be a few who are both socially and educationally backward, but it cannot be said that all citizens, residing in rural areas, are socially and educationally backward.

29. Reservation, concessions and incentives for students who passed out from schools in rural areas cannot, therefore, be sustained on the ground that rural areas in its entirety, represent the socially and educationally backward classes of citizens. This concession cannot be extended to a majority population of the State which is poor, as it is not a homogeneous class. Poverty, in rural areas, cannot form the basis of classification to support reservation for rural areas as and poverty is found in all parts of India. The premise that students, studying in non-residential government/zilla parishad/municipal schools, suffer from poverty, and are therefore economically backward, cannot also form the basis of a

classification to bring the concessions extended to them within the ambit of Article 15(4) of the Constitution of India.

30. As held in *Pradip Tandon*⁴, the contention that the number of marks, obtained by candidates from rural areas, showed that they were much lower than the marks obtained by general candidates, and this indicated educational backwardness, is neither a valid nor a justifiable ground for determining social and educational backwardness. Educational institutions should attract the best talents. It is evident, therefore, that lower marks being secured by students, who passed 10th class from non-residential government/zilla parishad/ municipal schools, is neither a valid nor a justifiable basis for determining the social and educational backwardness of a class of citizens.

31. Article 15(4) of the Constitution of India is not restricted to reservation alone, but enables the State to make special provisions for the advancement of the socially and educationally backward classes, the Scheduled Castes and Scheduled Tribes. The special provisions which the State may make, for these specified categories, would include providing them concessions and incentives, such as the incentive provided in the present case of adding a deprivation score to their GPA. Such concessions/incentives would be saved from the vice of discrimination, and violation of Article 15(1), only if they fall within the ambit of Article 15(4), and such concessions/incentives are provided only to socially and educationally backward classes, the Scheduled Castes and the Scheduled Tribes and not, as Statute 13(3) would stipulate, to the socio-economically challenged students. Article 15(4) does not enable the State, or its instrumentalities, to provide such concessions/incentives to the economically backward classes of citizens.

32. The concession/incentive, as stipulated in Statute 13(3), is made available to all students who passed their 10th Class from non-residential government/zilla parishad/Municipal schools, which would, undoubtedly, include students from the open category also. Students, who passed their 10th Class from such schools, are not confined only to the socially and educationally backward classes or to the Scheduled Castes and the Scheduled Tribes, but would also include the affluent and those who, though economically backward, are from the socially and educationally advanced sections of society. Reliance placed by *Ms.M.Vidyavathi*, on *Pradip Tandon*⁴, is therefore misplaced.

33. In *Gopal D.Tirthani*³, a provision giving weightage of marks to rural services, and for holding a separate eligibility test for determining the merit of in-service candidates for admission to post-graduate medical courses, as distinguished from open category candidates, was under challenge. It is in this context that the Supreme Court observed: To withstand the test of reasonable classification within the meaning of Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (i) it must be founded on an intelligible differential which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differential must have a rational

relation with the object sought to be achieved. It is impermissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. We have, in the earlier part of the judgment, noted the relevant statistics as made available to us by the learned Advocate-General under instructions from Dr Ashok Sharma, Director (Medical Services), Madhya Pradesh, present in the Court. The rural health services (if it is an appropriate expression) need to be strengthened. 229 community health centres (CHCs) and 169 first-referral units (FRUs) need to be manned by specialists and block medical officers who must be postgraduates. There is nothing wrong in the State Government setting apart a definite percentage of educational seats at post graduation level consisting of degree and diploma courses exclusively for the in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a postgraduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehension, the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG degree/diploma course they would serve the State Government for another five years. Additionally, a bank guarantee of rupees there lakhs is required to be submitted along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved (emphasis supplied)

34. To satisfy the test of a reasonable classification, within the meaning of Article 14 of the Constitution, the classification must fulfil twin tests i.e., (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group, from those left out or placed outside the group, and (ii) the differentia must have a rational relation to the object sought to be achieved. As long as there is a reasonable nexus between the basis of classification, and the object sought to be achieved, the classification is valid. It is impermissible to use territories or the nature of objects or occupations or the like as the basis for classification (Gopal D.Tirthani³).

35. While classification of students, studying in non-residential government/ zilla parishad/municipal schools, may be founded on an intelligible differentia, as students from these schools are distinguishable from those studying in other schools, such a classification would be held to satisfy the test of Article 14 only if this differentia has a reasonable nexus to the object sought to be achieved, and such an object is legal and valid.

36. The object which the respondent-university seeks to achieve, as stated by them in their counter affidavit, is that students, who studied in non-residential government/zilla parishad/Municipal schools, were not reaching the expected Grade Point Average for securing admissions into IIIT for the 6 Year Integrated Course. This concession/incentive, of adding a deprivation score of 0.4 to the GPA, is in addition to the reservations provided in favour of the socially and educationally backward classes. In its counter- affidavit, the respondent-university has stated that the rule of reservation, fixed by the State Government, is being strictly followed, which is 15% for the SC category, 6% for the ST category, 7% for the BC-A category, 10% for the BC-B category, 1% for the BC-C category, 7% for the BC-D category and 4% for the BC-E category.

37. The concession, of giving weightage of a maximum deprivation score of 0.4, is extended to students from non- residential government/zilla parishad/ municipal Schools on the premise that all of them are socio-economically challenged, an ambiguous expression which appears to presume, erroneously, that the economically challenged are invariably socially challenged also. The counter affidavit does not disclose the basis on which the respondent-university has concluded that all students, from these schools, are economically challenged. Even otherwise, economic backwardness is not a valid ground for making special provisions under, and extending incentives/concessions to the economically challenged is not sanctioned by, Article 15 (4) of the Constitution of India.

38. The concession of providing a deprivation score of a maximum of 0.4, to students studying in non-residential government/zilla parishad/municipal schools must fail, firstly because there is no verifiable data to show that all the students studying in such schools are socio-economically challenged which is the object of Statute 13(3). Secondly, because this object, of providing weightage to the socio-economically challenged students, is not legally valid as concessions in favour of the economically backward is not permissible under Article 15(4) of the Constitution of India. Reliance placed on Gopal D.Tirthani³ is therefore misplaced.

39. While establishing the University and Colleges in rural areas would, undoubtedly, provide an opportunity for students from rural areas to have greater access to the educational facilities provided thereat, reservation/ concession/incentive to students from certain categories of schools alone, and denying such benefits to students from other schools, does not have a rational nexus to a permissible objective. Extension of such concessions to the socio-economically challenged (whatever this expression means) would fall foul of the equality clause in Article 15 (1) of the Constitution of India, besides violating Article 14 of the Constitution of India as neither does the classification have a rational nexus to the object sought to be achieved nor is the avowed object permissible under Article 15 of the Constitution. Statute 13(3) not only falls foul of Article 15(4) of the Constitution, it also suffers from the vice of discrimination and arbitrariness offending Articles 14 and 15(1) thereof.

40. In Satyabrata Sahoo⁵, additional weightage of marks was given to in-service

candidates in the post-graduate medical entrance examination, for having served in rural areas/tribal areas, even for seats earmarked for the open category. In this context the Supreme Court held: ..We have referred to the above mentioned judgments only to indicate the fact that this Court in various judgments has acknowledged the fact that weightage could be given for doctors who have rendered service in rural/tribal areas but that weightage is available only in in-service category, to which 50% seats for PG admission has already been earmarked. The question is whether, on the strength of that weightage, can they encroach upon the open category, i.e direct admission category. We are of the view that such encroachment or inroad or appropriation of seats earmarked for open category candidates (direct admission category) would definitely affect the candidates who compete strictly on the basis of the merit.

41. The purpose and object for giving weightage to in-service candidates who have rendered rural/tribal service is laudable and their interest has been taken care of by the Medical Council of India as well as the prospectus issued for admission to the various medical colleges in State of Odisha but they have to come through the proper channel i.e. the channel exclusively earmarked for in-service candidates and not through the channel earmarked for candidates in the open category. The in-service candidates are also free to compete through the open category just like any other who fall under that category. Further, it is also relevant to note those who get admission in post graduate courses through the open category have to execute a bond stating that they would serve rural/tribal areas after completion of their post-graduation. In fact, weightage is given to those candidates who have rendered service in rural/tribal areas when they compete for admission to PG (Medical) Courses in in-service category for whom 50% seats are earmarked (emphasis supplied).

42. While weightage of marks given to in-service candidates was held to satisfy the test of Article 14 of the Constitution of India as long as it was confined to the quota prescribed for in-service candidates alone, and did not encroach into the seats left open for the open competition, the Supreme Court, in *Satyabrata Sahoo*⁵, made it clear that such weightage, for in-service candidates, could not be provided in seats under the open category.

43. In *Dinesh Singh Chauhan*⁶, the proviso to Regulation 9 (2) (d) permitted weightage of marks for admission in post-graduate medical courses, to be given as incentives to in-service candidates for each year of service rendered by them in remote or difficult areas upto a maximum of 30% marks. On the validity of this Regulation being subjected to challenge, the Supreme Court observed: In the present case, we have held that providing 30% reservation to in-service candidates in Post Graduate Degree Courses is not permissible. It does not however, follow that giving weightage or incentive marks to in-service candidates for Post Graduate Degree Courses entails in excessive or substantial departure from the rule of merit and equality. For, Regulation 9 recognizes the principle of giving weightage to in-service candidates while determining their merit. In that

sense, incentive marks given to in-service candidates is in recognition of their service reckoned in remote and difficult areas of the State, which marks are to be added to the marks obtained by them in the NEET. Weightage or incentive marks specified in Regulation 9 are thus linked to the marks obtained by the in-service candidate in the NEET and reckon the commensurate experience and services rendered by them in notified remote/difficult areas of the State. That is a legitimate and rational basis to encourage the Medical Graduates/Doctors to offer their services and expertise in remote or difficult areas of the State for some time. Indisputably, there is a wide gap between the demand for basic health care and commensurate medical facilities, because of the inertia amongst the young doctors to go to such areas. Thus, giving specified incentive marks (to eligible in-service candidates) is permissible differentiation whilst determining their merit. It is an objective method of determining their merit.

44. The imperative of giving some incentive marks to doctors working in the State and more particularly serving in notified remote or difficult areas over a period of time need not be underscored. For, the concentration of doctors is in urban areas and the rural areas are neglected. Large number of posts in Public Health Care Units in the State are lying vacant and unfilled in spite of sincere effort of the State Government. This problem is faced by all States across India. This Court in *Dr.Snehelatas* case (supra) had left it to the Authorities to evolve norms regarding giving incentive marks to the in-service candidates. The Medical Council of India is an expert body. Its assessment about the method of determining merit of the competing candidates must be accepted as final (*State of Kerala V. T.P.Roshana*; also see *MCI V. State Of Karnataka*). After due deliberations and keeping in mind the past experience, Medical Council of India has framed Regulations inter alia providing for giving incentive marks to in-service candidates who have worked in notified remote and difficult areas in the State to determine their merit. The Regulation, as has been brought into force, after successive amendments, is an attempt to undo the mischief. (emphasis supplied).

45. Weightage of marks to in-service candidates in admission to post-graduate medical seats, for services rendered by them in rural areas, was upheld by the Supreme Court in *Dinesh Singh Chauhan*⁶, taking note of the fact that doctors were concentrated mainly in urban areas, and rural areas were neglected; a large number of posts in Public Health Care Units were lying vacant and unfilled inspite of sincere efforts of the State Government; and providing such incentives to in-service candidates, who served in difficult areas, was justified.

46. Unlike in *Dinesh Singh Chauhan*⁶, where weightage of marks given for service rendered in difficult areas was held to be valid by the Supreme Court, in the present case the weightage of marks, in the form of a maximum deprivation score of 0.4, is extended to students who passed their 10th Class from non-residential govt/zilla parishad/municipal schools on the erroneous premise that all such students are from the socio-economically backward category. While this

premise is itself flawed, even if we were to presume that it is not, the socio-economic backward class of citizens are not among those specified classes in whose favour alone special provisions can be made by the State or its instrumentalities under Article 15 (4) of the Constitution of India.

47. As we are satisfied that Statute 13 (3) of the Act violates Articles 14 and 15 of the Constitution of India, and is liable to be struck down on this ground alone, it is wholly unnecessary for us to examine the contention of Sri P. Veerabhadra Reddy, learned counsel for the petitioner, that such concessions/incentives are also contrary to the Presidential Order made under Article 371-D of the Constitution. This question is left open to be considered, if need be, in appropriate legal proceedings.

48. A feeble submission is made by Ms. M. Vidyavati, learned Standing Counsel for the respondent-University, that this order should be given prospective effect since admissions to the six year Integrated Engineering Course has already been completed, and classes have commenced; against the judgment of the Division Bench of this Court, in *Mudavathu Nagaraju*¹, the respondent- University had carried the matter in appeal; and the Supreme Court had directed that the students, who were already admitted, should not be disturbed.

49. The order of the Supreme Court, in *Dean Rajiv Gandhi Univ. of Knowledge Tech v. Mudavathu Nagaraju*, reads thus: Issue Notice.

Interim stay of the applicability of the impugned order to admissions made prior to the date of judgment of the High Court. However, the interim stay will not affect the direction to admit the second respondent to the engineering course and it is made clear that the direction for his admission is not disturbed.

50. It is only students, who were admitted prior to the date of the judgment, who were directed by the Supreme Court not to be disturbed. We had by the order dated 14.07.2017, while issuing notice before admission, directed the respondent-University to reserve six seats, among the seats remaining unfilled as on the date of the order, in the S.V. University local area. These six seats have, admittedly, not been filled-up till date. As a consequence of our order, declaring Statute 13(3) made under the Act ultra vires Articles 14 and 15 of the Constitution of India, the respondent- university shall consider all eligible candidates, strictly in the order of their inter-se merit, for admission to the six un-filled seats in the six year integrated engineering course. This exercise shall be completed, and the selected students shall be admitted, within two weeks from the date of receipt of a copy of this order.

51. The Writ Petition is allowed. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.