
(2017) 01 UK CK 0012
In the Uttarakhand High Court
Case No : 350 of 2016

Atul Rana & others

APPELLANT

Vs

Chief Secretary & others

RESPONDENT

Date of Decision : 07-01-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions

Citation : (2017) 01 UK CK 0012

Hon'ble Judges : Rajiv Sharma, Sudhanshu Dhulia

Bench : Division Bench

Advocate : S.S. Yadav, Rajeev Singh Bisht

Judgement

1. This special appeal is instituted against the judgment dated 23rd November, 2016 rendered by learned Single Judge in Writ Petition (M/S) No.2391 of 2016.

2. Appellants approached this Court by way of Writ Petition (M/S) No.2391 of 2016 seeking the following reliefs: - "(i) Issue a writ, order or direction in the nature of Certiorari quashing the Clause A- 1, A-2 & A-4 of the Heading of determination of merit of under Graduate classes of directory of 2016-17.

(ii) Issue a writ, order or direction in the nature of Mandamus directing the respondent nos. 1, 2 & 3 to provide the same weightage to the petitioners those are students of C.B.S.E. Board like student of Uttarakhand Board in the admission session of respondent no. 4 college.

(iii) Issue a writ, order or direction in the nature of Mandamus directing the respondent no. 4 to give the provisional admission to the petitioner in the B.com, B. Sc. Ist year in the Session 2016-17 in the Saheed Durgamalla Govt. P.G. College, Doiwala, Dehradun."

3. Case of the appellants/petitioners in the writ petition was that Clauses A-1, A-2 and A-4 of the Brochurecum-Admission Form for the Academic Session

2016-17, issued by Shaheed Durga Malla Govt. Post Graduate College, Doiwala, Dehradun, were unconstitutional. Appellants have also sought the provisional admission in B.Com/ B.Sc. First Year in the Session 2016-17 in the aforesaid college. Respondent No.4/Principal of the College filed its reply to the writ petition. Learned Single Judge dismissed the petition on 23.11.2016. Hence, this special appeal.

4. Petitioners have qualified All India Senior School Certificate Examination (Plus Two Examination) from the Central Board of Secondary Education. They have sought admission in B.Com/B.Sc. First Year in Shaheed Durga Malla Govt. Post Graduate College, Doiwala (Dehradun) for the Academic Session 2016-2017. Appellant no.1 was granted admission in B.A. First Year for the Academic Year 2016-17, however, the appellants nos.2, 3 and 4 were not granted admission, as they have secured less marks than the cut off marks. According to the merit index, appellant no.2 Ajay Vikram has secured 71.00 marks against the cut-off merit index of 74.00. Appellant no.3 Mohit Chauhan secured 72.2 merit index against the cut-off merit index of 74.00. Appellant no.4 Adhyan Bhatt secured 65.00 merit index against the cutoff merit index of 65.6.

5. According to the Government Order dated 28.08.2014, for the Session 2014-15, the candidates who had passed Intermediate Examination from the Uttarakhand Secondary Education Board, were to be given the weightage/ bonus of "10" marks instead of "05" marks. The order further provides that the weightage being given to the students of Kumaon University would continue as such. However, for the Academic Session 2015-2016, a uniform policy would be adopted for granting the weightage/bonus marks for admission at graduate level.

6. Attention of the Court has been drawn to Clauses A- 1, A-2, A-3 and A-4 of the Brochure-cum-Admission Form for the Academic Year 2016-2017. According to Clause A-1, the students who have qualified the intermediate examination from Uttarakhand Secondary Education Board, would be eligible for grant of additional 10 marks towards the educational qualification. Clause A-2 provides that the students who have passed out from the colleges of Garhwal Region, would be given weightage of 05 marks. According to Clause A-3, the Wards of Teachers/ Employees of the Colleges would be given weightage of 03 marks. Clause A-4 of the Prospectus provides for giving weightage of 10 additional marks to the students who have passed out from the feeder schools i.e. Lachhiwala, Dudhli, Rani Pokhari, Bhogpur, Majri, Chhiddu Wala, Dandi Barkot, Bhaniya Wala and Jollygrant. The weightage is required to be added to the percentage of Intermediate Marks obtained by the students.

7. It is settled law that Article 14 permits classification. However, such classification must satisfy the test of intelligible differentia so as to distinguish the persons/ things which have been clubbed together and the persons /things which have been left out. There should be reasonable nexus between the classification and the object sought to be achieved. 8. Their Lordships of Hon. Apex Court in A.I.R. 1968 Supreme Court 1012 in the case of "P. Rajendran v.

State of Madras" have held that Art. 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Their Lordships have held as under: - "11. The question whether districtwise allocation is violative of Art. 14 will depend on what is the object to be achieved in the matter of admission to medical colleges. Considering the fact that there is a larger number of candidates than seats available, selection has got to be made. The object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district. It cannot be and has not been denied that the object of selection is to secure the best possible talent from the two sources so that the country may have the best possible doctors. If that is the object, the argument on behalf of the petitioners/appellant is that that object cannot possibly be served by allocating seats districtwise. It is true that Art. 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges, the allocation of seats districtwise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources.

13. Another justification that has been attempted is that candidates coming from various district would settle down in those districts and thus medical help would be available in sufficient measure in all the districts. Now this was not stated in the affidavit on behalf of the State of Madras. Besides there are no facts and figures to suggest that candidates from a particular district would by and large settle down in that district. Further the various options in the matter of nativity certificate to which we have referred, show that candidates will have a number of districts to choose from depending upon where they think that their chances are best and therefore the argument that districtwise allocation is justifiable on this ground is in our opinion of no merit. We are satisfied therefore that the State of

Madras has made out no case for districtwise allocation of seats in medical colleges. We are also satisfied that such allocation results in discrimination and there is no nexus between this territorial distribution and the object to be achieved, namely, admission of the best talent from the two sources already indicated. We are therefore of opinion that allocation of seats on districtwise basis is violative of Art. 14. We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that districtwise classification which is being justified on a territorial basis in these cases is violative of Art. 14, for no justification worth the name in support of the classification has been made out. We therefore hold that r. 8 providing for districtwise allocation is bad, as it violates Art. 14 and we hereby strike it down".

9. Their Lordships of Hon. Apex Court in 1971 (1) Supreme Court Cases Page 38 in the case of "Minor A. Peeriakaruppan v. Sobha Joseph" have held that before a classification can be justified, it must be based on an objective criteria and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method adopted. The unit wise distribution of seats is violative of Articles 14 and 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Articles 14 and 15. Their Lordships have held as under:- "12. Now coming to the question of delay, we see no reason why there should be any delay in preparing a consolidated list. At any rate the delay caused is not likely to be such as to justify departure from the principle of selection on the basis of merit on a State wise basis. Before a classification can be justified, it must be based on an objective criteria and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method adopted. The complaint of the petitioners is that unit wise distribution of seats is but a different manifestation of the district wise distribution sought in 1967-68 has some force though on the material on record we will not be justified in saying that the unit wise distribution was done for collateral purposes. Suffice it to say that the unit wise distribution of seats is violative of Articles 14 and 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Articles 14 and 15. It may be remembered that the students were advised as far as possible to apply to the unit nearest to their place of residence."

10. Their Lordships of Hon. Apex Court in 1972 (1) Supreme Court Cases Page 660 in the case of "The State of Andhra Pradesh & others v. U.S. V. Balram, etc." have held that after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the said classification has no reasonable relation to the

object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. Their Lordships have held as under: - "51. It is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical College; but when once a common Entrance Test has been prescribed for all the candidates on the basis of which selection is to be made, the rule providing further that 40% of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. The reservation of 40% to the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence we agree with the High Court, when it struck down this reservation under Rule 9 contained in G. No. 1648 of 1970 as violative of Article 14."

11. Their Lordships of Hon. Apex Court in 1980 (4) Supreme Court Cases Page 95 in the case of "Miss Nishi Maghu & others v. State of J&K and others" have held that classification "for rectification of regional imbalance" made without laying any objective standard to guide the selection committee in determining the areas of imbalance was invalid. Their Lordships have held as under: - "6. Some of the categories mentioned in these orders have been challenged as arbitrary and unconstitutional. We may begin with the classification made for "rectification or regional imbalance" for which 18 percent of the seats is reserved. The criticism is that the order creating this category does not identify the areas which suffer from imbalance nor does it supply any guidelines for the selection committee. It appears that the selection committee has admitted 9 candidates under this head whose names appear at serial Nos. 43 to 51 of the list of selected candidates annexed to the supplementary affidavit filed on behalf of the first respondent, State of Jammu and Kashmir. How exactly the selection committee understood what regional imbalance was and on what basis they accepted certain areas of the State as suffering from imbalance is not known. The supplementary affidavit seeks to explain the category as follows :

"...the State Government has found that for peculiar historical, geographical and topographical reasons there prevails an imbalance in the matter of development of the various parts of the State which has resulted in certain areas being backward as compared with the rest. In order therefore to rectify the distortion which inevitably would otherwise creep into the selection, the State Government has reserved 18% of seats for rectification of such imbalance". The affidavit refers to the disadvantages suffered by areas which adjoin the actual line of control and the bad pockets and states: "Likewise there are other areas in the State which have received lesser attention in the past in the matter of economic development. These areas, inter alia, are either inaccessible on account of difficult geographical terrain or suffer from difficult climatic condition.... Naturally therefore the human resources from those areas have also not developed".

It may be recalled that the notification dated June 21, 1979 by which applications were invited for admission to the medical college provided that the selection of candidates would be made in accordance with the manner and procedure laid down in the various orders issued by the Government from time to time, but none of these orders contains an explanation as the one now offered in the supplementary affidavit. Even with this explanation the affidavit does not identify the areas of imbalance. There was thus no objective standard to guide the selection committee. Mr. Kacker appearing for the State of Jammu and Kashmir sought to argue that, by area of imbalance what was meant was really the same thing as areas adjoining actual line of control and bad pockets. But in all the orders issued by the Government from time to time the area of imbalance has been treated as a distinct category. Even in the supplementary affidavit it is not claimed that the area of imbalance is only another name for the areas adjoining the actual line of control and the bad pockets, what is said is that these are similar in being equally backward. But this does not mean that these categories are all identical and co-extensive in all respects. It will be noticed that, in spite of the similarity, even areas adjoining the actual line of control and the bad pockets have been put under different categories.

7. Mr. Kacker also urged that as the areas suffering from imbalance were backward areas, constituting a separate category for candidates coming from such backward areas was in accordance with the report of a committee headed by Mr. Justice Anand of Jammu and Kashmir High Court. The Anand Committee was appointed on August 24, 1976 to examine and remove defects in the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation) Rules, 1970 and the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation of Appointment by Promotion) Rules 1970. These rules were framed on the basis of the recommendations of a committee, called the Wazir Committee, set up in 1969 for drawing up a list of backward classes in the State. Mr. Justice J.N. Wazir, a former Chief Justice of Jammu and Kashmir High Court, was the Chairman of this Committee. The Wazir Committee submitted its report in November 1969 recommending several classes of citizens to be classified as backward classes. The validity of these Rules came up for scrutiny before this Court in *Janki Prasad Parimoo and Ors. etc. etc. v. State of Jammu and Kashmir and Ors.* [1973] 3SCR236. In *Parimoo's* case certain defects in the 1970 Rules were pointed out and the Anand Committee was constituted, as stated already, "with a view to examine removal of defects" in the 1970 Rules. The Anand Committee submitted its report in September 1977. Mr. Kacker drew our attention to the fact that the report was debated on the floor of both houses of the Jammu and Kashmir legislature which resolved as follows : "The report need to be adopted by the Government as quickly as possible and rules made so that the backward classes could derive benefits quickly".

It is not necessary to examine whether the Anand Committee report identifies the areas of imbalance in the State because the selection committee was required to follow not the Anand Committee report but what was provided in the

orders passed by the Government. There is no order containing any reference to the Anand Committee report. There is also nothing to show that the Government had adopted the report of that the selection committee proceeded on the basis of that report. It appears from page 59 of the Anand Committee report that the Committee did not accept "social castes" as a category indicative of backwardness, but the selection committee has selected one candidate under this category which plainly shows that the selection committee was not guided by the Anand Committee report. There can be no doubt that the selections made were not and could not be on the basis of that report. It must therefore be held that the classification made for rectification of regional imbalance without identifying the areas suffering from imbalance is vague and the selections made under this head are accordingly invalid.

8. In support of this contention that area of imbalance was only another name for bad pockets or areas adjoining actual line of control, Mr. Kacker claimed that the 9 candidates selected for "rectification of imbalance" all came from either bad pockets or from areas adjoining actual line of control. The claim was questioned by the petitioners who sought to disprove it by reference to the material on record. We do not consider it necessary to examine the individual cases here. It may be that some of these candidates really came from areas adjoining actual line of control or bad pockets, yet they cannot be accommodated unless the percentage of seats reserved for these two categories was raised.

9. Another category under challenge is "social castes". Included in this category are candidates of the State belonging to any of the castes indicated in appendix III to the instructions forming part of the order dated, July 9, 1973 to which reference has already been made. The Wazir Committee in their report mentioned 23 low social castes "as educationally and economically extremely backward" but 4 of them have been held by this Court in Parimoo's case as having no basis for inclusion in the list. In appendix III 19 of these castes have been retained which were not disapproved in Parimoo's case. Chapter XIII of the Wazir Committee report makes it clear that the classification is with reference to the nature of occupations which the people belonging to this category pursue. That being so we find no substance in the challenge that the classification offends Article 14 or Article 15 of the Constitution. Under this category only one candidate has been selected whose name, Edwin Khokkar, appears at serial No. 33 in the list of selected candidates annexed to the supplementary affidavit filed on behalf of the State of Jammu and Kashmir. An objection was raised against his selection that he being a Christian, as his name shows, could not belong to any of the castes mentioned in appendix III. But as the category is based on occupation and not on caste as such, the objection must be overruled.

10. The classifications based on areas adjoining actual line of control and bad pockets are also challenged as violative of Article 14 of the Constitution. These are really backward areas and the residents of these areas are indisputably socially and educationally backward. Reservations made for candidates from such

backward classes cannot be said to offend Article 14. In fact in Parimoo's case the reservation made for residents of bad pockets which were identified in the report of the Wazir Committee, was accepted as valid. We therefore hold that the challenge to these two categories is not justified."

12. Their Lordships of Hon. Apex Court in 1986 (2) Supreme Court Cases Page 534 in the case of "Nidamarti Maheshkumar v. State of Maharashtra and others" have held that the region-wise scheme adopted by the State Government in Rule B(2) clearly results in denial of equal opportunity violative of Article 14 of the Constitution. The rule is thus unconstitutional and void. Their Lordships further held that where the region from which the students of a university are largely drawn is backward either from the point of view of opportunities for medical education or availability of competent and adequate medical services, it would be constitutionally permissible, without violating the mandate of the equality clause, to provide a high percentage of reservation or preference for students coming from that region. But it is not possible to accept the view that the provision in Rule B(2) that a student from a school or college situate within the jurisdiction of a particular university would not be eligible for admission to medical college or colleges situate in the jurisdiction of another university but would be confined only to medical college or colleges within the jurisdiction of the same university, was intended to give protection to students belonging to comparatively backwards regions. It is not possible to categorise the regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories. But even if it is so, such region-wise classification for admission to medical colleges cannot be sustained. Their Lordships further held that in the State, only one common examination for the 12th Standard held in the entire State. As a result of the regionwise classification, a student from one region who has secured lesser marks than another from a different region may be selected for admission to the medical college or colleges within his region while the student who has secured higher marks may not succeed in getting selected for admission to the medical college or colleges within his region. Their Lordships have held as under: - "6. Here, in the present case, region-wise classification for admission to medical colleges was sought to be depended on the ground that Vidharbha and Marathwada regions are backward as compared to Pune and Bombay regions which are far more advanced and it was contended on behalf of the State Government that, in the circumstances, the provision in Rule B(2) that a student from a school or college situate within the jurisdiction of a particular university would not be eligible for admission to medical college or colleges situate in the jurisdiction of another university but would be confined only to medical college or colleges within the jurisdiction of the same university, was intended to give protection to students In Vidharbha, Marathwada and other predominantly rural areas the population of which is socially, economically and educationally backward for otherwise they would have no opportunity for medical education since they would not be able to compete with students from Pune and Bombay regions and consequently the classification made by this provision was

constitutionally permissible. We are afraid this contention is not well-founded and must be rejected. In the first place there is no material to show that the entire region within the jurisdiction of the university in Vidharbha is backward or that the entire region within the jurisdiction of Pune University is advanced. There are quite possibly even in the region within the jurisdiction of Pune University predominantly rural areas which are backward and equally there may be in the region within the jurisdiction of the university in Vidharbha, areas which are not backward. We do not think it is possible to categorise the regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories and in any event there is no material placed before us which would persuade us to reach that conclusion. But even if the regions within the jurisdiction of the universities in Vidharbha and Marathwada can be said to be backward and regions within the jurisdiction of the universities in Bombay and Pune can be said to be advanced, we do not think that regionwise classification for admission to medical colleges can be sustained. There is no reason why a brilliant student from a region which is within the jurisdiction of a university in Vidharbha or Marathwada area should be denied the opportunity of medical education in Bombay or Pune. Why should he remain confined to the so-called backward region from which he comes? Should an equal opportunity for medical education not be made available to him as is available to students from regions within the jurisdiction of Bombay and Pune Universities? Why should mobility for educational advancement be impeded by geographical limitations within the State? Would this clearly not be a denial of equal opportunity violative of Article 14 of the Constitution? The answer must clearly be in the affirmative. It would plainly be violative of the mandate of the equality clause to compartmentalize the State into different regions and provide that a student from one region should not be allowed to migrate to another region for medical education and thus be denied equal opportunity with others in the State for medical education. This is precisely the reason why this Court struck-down unitwise scheme for admission to medical colleges in the State of Tamil Nadu in *A. Peeria Karuppan's* case (supra). The unit-wise scheme which was held to be constitutionally invalid in that case was a scheme under which the medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges in the mofussil was constituted as a unit and a separate Selection Committee was set up for each of these units. The intending applicants were asked to apply to any one of the committees but were advised to apply to the Committee nearest to their place of residence and if they applied to more than one committee, their applications were to be forwarded by the Government to only one of the committees. The petitioners challenged the validity of this unit wise scheme and contended that the unit-wise scheme was violative of Article 14 of the Constitution inter alia because the applicants of some of the units were in a better position than those who applied in other units, since the ratio between the applicants and the number of seats in each unit varied and several applicants who secured lesser marks than the petitioner were selected merely because their applications came to be considered in other units. This contention was upheld by

the Court holding that the scheme in question was invalid as it was discriminatory against some of the applicants. The ratio of this decision applies fully and completely to the present case. Here also as a result of the regionwise classification a student from one region who has secured lesser marks than another from a different region may be selected for admission to the medical college or colleges within his region while the student who has secured higher marks may not succeed in getting selected for admission to the medical college or colleges within his region. And moreover, a student from one region would have no opportunity for securing admission in the medical college or colleges in another region, though he may have done much better than the student in that other region. The regionwise scheme adopted by the State Government in Rule B(2) clearly results in denial of equal opportunity violative of Article 14 of the Constitution. We may at this stage refer to the decision of this Court in *D. N. Chanchala's case* (supra) on which considerable reliance was placed on behalf of the State Government. The reservation impugned in this case was university-wise reservation under which preference for admission to a medical college run by a university was given to students who had passed the PUC examination of that university and only 20 per cent of the seats were available to those passing the PUC examination of other universities. The petitioner who had passed PUC examination held by the Bangalore University applied for admission to any one of the medical colleges affiliated to the Karnataka University. She did not come within the merit list on the basis of 20 per cent open seats which were filled up and since she had not passed the PUC examination held by the Karnataka University, her application for admission was rejected. She therefore filed writ petition under Article 32 of the Constitution contending inter alia that the university-wise distribution of seats was discriminatory and hence violative of Article 14 of the Constitution. This contention was rejected by the Court. Shelat, J. speaking on behalf of the Court gave the following reasons in support of its conclusion:

In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of districtwise or unitwise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders upto 20 per cent of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in these rules would defeat the object of the rules as was said in *Rajendran case* or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily

mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them.

It will be obvious on a little scrutiny of these reasons that they cannot possibly have any application to the regionwise classification adopted in the present case. There are two basic differences between the regionwise classification in the present case and the universitywise reservation in D.N. Chanchala's case (supra). Firstly, there was no common examination or uniform standard of evaluation in the different universities in D.N. Chanchala's case (supra) so that it could not be said that a candidate obtaining lesser marks in the PUC examination held by one university was necessarily less meritorious than another student getting more marks in the PUC examination held by another university. But here in the present case there is only one common examination for the 12th Standard held in the entire state with the same syllabus and the same set of questions and uniform standard of evaluation with the result that it can be safely predicated that a student who gets less marks in the 12th Standard examination may ordinarily be regarded as less meritorious than another student getting higher marks. If there were different examinations held by the three Division Boards with different sets of questions and different standards of evaluation the ratio of the decision in D.N. Chanchala's case would have inevitably and irresistibly applied. But the standard of comparison between students throughout the State being clear and well-defined on account of a common 12th Standard examination with same set of questions and uniform standard of evaluation the decision in D.N. Chanchala's case can have no application. Moreover in D.N. Chanchala's case (supra) the reservation in favour of students passing PUC examination of a particular university was not total but 20 per cent of the seats were made available to those passing the PUC examination of other universities. Here in the present case, however, the reservation in favour of students who have studied in schools or colleges situate in the region within the jurisdiction of a particular university is 100 per cent and no student who has studied in a school or college within the region of another university can possibly get admission in the medical college or colleges situate within the region of that the first mentioned university. We must therefore hold that the ratio of the decision in D.N. Tanchala's case does not compel us to take a view different from the one we are inclined to take on first principle.

7. But we would like to make it clear that it would not be unconstitutional for the State Government to provide for reservation or preference in respect of a certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality. There are two reasons why such reservation or preference would be constitutionally permissible. In the first place it would "use a considerable amount of hardship and inconvenience if students residing in the region of a particular university are Compelled to move

to the region of another university for medical education which they might have to do if selection for admission to the medical colleges in the entire State were to be based on merit without any reservation or preference regionwise. It must be remembered that there would be a large number of students who, if they do not get admission in the medical college near their residence and are assigned admission in a college in another region on the basis of relative merit, may not be able to go to such other medical college on account of lack of resources and facilities and in the result, they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in the medical college. The opportunity for medical education provided to them would be illusory and not real because they would not be able to avail of it. Moreover some difficulty would also arise in case of girls because if they are not able to get admission in the medical college near the place where they reside they might find it difficult to pursue medical education in a medical college situated in another region where hostel facilities may not be available and even if hostel facilities are available, the parents may hesitate to send them to the hostels. We are therefore of the view that reservation or preference in respect of a certain percentage of seats may legitimately be made in favour of those who have studied in schools or colleges within the region of a particular university, in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The only question is as to what should be the extent of such reservation or preference. But on this question we derive considerable light from the decision in Dr. Pradeep Jain's case (supra) where we held that reservation based on residence requirement or institutional preference should not exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made and that the remaining 30 per cent of the open seats at the least should be made available for admission to students on All-India basis irrespective of the state or the university from which they come. We would adopt the same principle in case of regionwise reservation or preference and hold that not more than 70 per cent of the total number of open seats in the medical college or colleges situate within the area of jurisdiction of a particular university, after taking into account other kinds of reservations validly made, shall be reserved for students who have studied in schools or colleges situate within that region and at least 30 per cent of the open seats shall be available for admission to students who have studied in schools or colleges in other regions within the State.

8. There is however one matter in respect of which it is necessary to make some clarification. The first is that when we talk of total number of open seats after taking into account other kinds of reservations validly made to which the percentages of 70 and 30 are to be applied as aforesaid, we mean the total number of open seats after deducting such number of open seats as are required to be made available for admission of students on All-India basis in accordance with the principles laid down in the decision in Dr. Pradeep Jain's case (supra) as

modified from time to time by various subsequent judgments delivered by this Court. The number of seats required to be made available for admission to students on All-India basis must first be taken out and then to the remaining number of open seats after taking into account other kinds of reservations validly made, the percentages of 70 and 30 must be applied for determining the extent to which regional reservation or preference can legitimately be made.

9. We accordingly allow the appeal, set aside the judgment of the High Court and declare Rule B(2) unconstitutional and void. We may however make it clear that admissions made on the basis of Rule B(2) shall not be disturbed, nor will any claim for admission be founded for the academic year 1985 on the basis of Rule B(2). If the State Government wants to make regionwise reservation or preference after setting apart the seats required to be made available for admission to students on All-India basis, we have laid down the guidelines which the State Government may follow so as to avoid clash with Article 14 of the Constitution."

13. Their Lordships of Hon. Apex Court in 1989 (1) Supreme Court Cases Page 93 in the case of "State of Rajasthan & another v. Dr. Ashok Kumar Gupta and others" have held that providing for addition of 5% to the total percentage of marks obtained by a candidate in the examination if he passed MBBS examination from the same medical college to which admission in post-graduate course is sought, was violative of Article 14 of the Constitution of India. Their Lordships have held as under: - 7. What emerges from the above statements is that while one of the appellants who has secured 1650 marks in the common competitive examination has not been able to secure admission in P.G. Course in any College in Rajasthan, a candidate who secured about 100 marks less (1548 marks) in the very same examination has been able to secure admission, the rest of the appellants have not been able to secure admission anywhere though they have demonstrably secured more marks and are more meritorious than the aforesaid 22 persons. This analysis exposes the extremely unfair and unjust impact of the impugned rule. This factor coupled with the four factors highlighted earlier leave no room for doubt that while on the face of it the impugned rule appears to extend or accord equal treatment of 5% weightage to the students of each of the five Medical Colleges, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of "apparent" equality is pierced, the ugly inequality stares one in the eyes which are opened to the offensive "reality". Such being the position the constitutional validity of the impugned rule cannot be sustained. It has to be buried unceremoniously as unconstitutional being violative of Art. 14 of the Constitution of India."

14. Their Lordships of Hon. Apex Court in 1989 (2) Supreme Court Cases Page 249 in the case of "Municipal Corporation of Greater Bombay & others v. Thukral Anjali Deokumar and others" have held that there is no intelligible differentia for the classification by way of collegewise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each

college from those excluded from such classification. By such classification of collegewise institutional preference, merit has been sacrificed, far less it has been preferred, when the university is the same for all these colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same university, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Article 14 of the Constitution. Their Lordships have held as under: - "15. We regret, we are unable to accept such a contention. It is not disputed that in each college the practical examinations are conducted by a set of four examiners consisting of one internal examiner from the same college, one external examiner from one of the other three colleges and two external examiners from outside" Bombay. Thus, excepting one internal examiner, three other examiners are external examiners and all these examiners are presumably appointed by the University. These examiners are of high academic qualification and we fail to understand why they would deviate from the standard prescribed by the University for the assessment and evaluation of the merit of the students in the practical examinations. There is, therefore, no substance in the contention that the standard of examination and evaluation of the merits of students in such practical examinations differ from college to college. Indeed, no material has been placed before us in support of the contention that different standards are adopted by the colleges in MBBS practical examinations. Equally untenable is that contention that because of institutional preference, the different marks given by different colleges do not affect the students, as it is the relative merit of the student in the same college which matters in the selection of post-graduate students. We do not find any justification for the apprehension that if the institutional preference is removed and all the candidates from the University are pooled together, a process of dilution and undesirable racing are likely to start making a mockery of the examination system and creating mad race of overtaking the other colleges. This apprehension has been expressed by the Dean of Lokmanya Tilak Memorial Medical College in his affidavit filed before the High Court.

16. Another ground in justification of collegewise institutional preference which has been relied on by the Dean in his affidavit and urged before us on behalf of the appellants is that the facilities differ from college to college in respect of the pattern of patients coming to the hospital attached to each college. By way of illustration, it is stated that in the hospital attached to Lokmanya Tilak Memorial Medical College there is maximum load of trauma cases (accidents and injuries), the number of such cases is much higher than that in the hospitals attached to the three other colleges. The undergraduate students in Lokmanya Tilak Memorial Medical College will have a wider exposure to these cases and will be far more suitable for seat in the postgraduate course in Surgery where he will

have to actually deal with these cases than a student of any other college. Even assuming that the facts stated above are correct, we do not think that the same constitute any ground in support of institutional preference. It is the university which is required to maintain a standard in respect of the subjects in the colleges affiliated to it. It is not the case of the University that the standard prescribed by it is not maintained in different colleges or that any particular college is higher in standard in a particular subject than that in another college. It may be that the number of accident and injury cases in the hospital attached to Lokmanya Tilak Memorial Medical College is higher than the number of such cases in the hospitals attached to other colleges, but that does not prove or lead to the conclusion that the students of other colleges will be deficient in surgery or less meritorious than the students of Lokmanya Tilak Memorial Medical College. The contention in this regard is without substance and is rejected.

18. In Seth G.S. Medical College (GSMC), there are five seats in Obstetrics and Gynaecology and one seat in Topiwala National Medical College (TNMC). In view of the impugned rules providing collegewise institutional preference, five seats in Obstetrics and Gynaecology in Seth G. S. Medical College were allotted to five of its students. Of these five students, Dr. Ganpat Sawant secured 150 marks and the four other candidates secured marks between 118 and 128 in the MBBS Examination. The respondents Dr. Anjali Deokumar Thukral and Dr. Sumeet Godambe, both students of Topiwala National Medical College obtained respectively 140 and 143 marks in the MBBS examination. They, however, were not admitted in their college, for there was only one seat in Obstetrics and Gynaecology and that seat was allotted to a student of that college who secured 156 marks in the MBBS examination. Thus, although Dr. Anjali Deokumar Thukral and Dr. Sumeet Godambe secured more marks than the students admitted in the post-graduate course in Obstetrics and Gynaecology in the said G. S. Medical College, except the said Dr. Ganpat Sawant. they were refused admission in view of collegewise institutional preference. Similarly, in respect of other disciplines many meritorious students could not get admission even though they secured higher marks than those admitted in the post-graduate degree course by virtue of the impugned rules. Thus, there is a patent discrimination inasmuch as students obtaining lesser marks have been preferred to those obtaining higher marks. There is no intelligible differentia for the classification by way of collegewise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each college from those excluded from such classification. By such classification of collegewise institutional preference, merit has been sacrificed, far less it has been preferred, when the university is the same for all these colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same university, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. In such circumstances, collegewise institutional preference cannot be supported and, it has already been noticed that this Court

has not approved of such preference at all.

19. *State of Rajasthan v. Dr. Ashok Kumar Gupta* AIR1989SC177 is a case of college-based institutional preference in respect of five medical colleges in Rajasthan under the same University. The impugned Ordinance of the University provided for addition of 5 per cent of the aggregate of marks which work out to be to 137.5 marks by way of institutional preference in the sense of preference dependant on the particular medical college at which the concerned candidate has passed his final MBBS Examination. This collegewise institutional preference has been disapproved by this Court in that case and the impugned Ordinance has been struck down. The learned Additional Solicitor General sought to distinguish *Dr. Ashok Kumar Gupta's* case from the instant case. We do not think that the said case is distinguishable from the case with which we are concerned, inasmuch as in both the cases the question of collegewise or college-based institutional preference is involved. It is stated that mode or method adopted for giving collegewise institutional preference in *Dr. Ashok Kumar Gupta's* case is different from the instant case but, in our opinion, nothing turns out of that. So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Article 14 of the Constitution. So, the impugned rules are discriminatory and do not satisfy the tests of reasonable classification and, as such, cannot be sustained.

22. After giving our thoughtful consideration to the question of collegewise institutional preference, we are of the view that such preference or reservation of seats is not permissible and the High Court has rightly struck down both the impugned Rule 4(A) framed by the Bombay Municipal Corporation and part of Rule 5 framed under the Government Resolution, that is to say, only in respect of its application to the Grant Medical College in the city of Bombay relating to admission to post-graduate M.D. Course. We, however, make it clear that the students who have been admitted to postgraduate M.D. Course pursuant to the impugned rules, their admission shall not be interfered with or disturbed."

15. Their Lordships of Hon. Apex Court in 1989 (2) Supreme Court Cases Page 145 in the case of "*Deepak Sibal v. Punjab University & another*" have held that educational institution is entitled to identify sources from which admission will be made to such institution, but there is no difference between identification of a source and a classification. If any source is specified, such source must also satisfy the test of reasonable classification and also that it has a rational nexus to the object sought to be achieved. It was further held that classification by the identification of a source must not be arbitrary. Their Lordships have ordered that if the appellants were otherwise eligible, they shall be entitled to be admitted even though the seats were already filled up. Their Lordships have held as under: - "9. It is now well settled that Article 14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely,

(1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question.

10. By the impugned rule, a classification has been made for the purpose of admission to the evening classes. The question is whether the classification is a reasonable classification within the meaning of Article 14 of the Constitution. In order to consider the question as to the reasonableness of the classification, it is necessary to take into account the objective for such classification. It has been averred in the written statement of Dr. Balram Kumar Gupta, Chairman, Department of Laws, Punjab University, the respondent No. 2, filed in the High Court, that the object of starting evening classes was to provide education to bona fide employees who could not attend the morning classes on account of their employment. The object, therefore, was to accommodate bona fide employees in the evening classes, as they were unable to attend the morning classes on account of their employment. Admission to evening classes is not open to the employees in general including private sector employees, but it is restricted to regular employees of Government/SemiGovernment institutions etc., as mentioned in the impugned rule. In other words, the employees of Government/Semi-Government institutions etc. have been grouped together as a class to the exclusion of employees of private establishments.

14. It is difficult to accept the contention that the Government employees or the employees of Semi-Government and other institutions, as mentioned in the impugned rule, stand on a different footing from the employees of private concerns, in so far as the question of admission to evening classes is concerned. It is true that the service conditions of employees of Government/SemiGovernment institutions etc. are different, and they may have greater security of service, but that hardly matters for the purpose of admission in the evening classes. The test is whether the employees of private establishments are equally in a disadvantageous position like the employees of Government/Semi-Government institutions etc. in attending morning classes. There can be no doubt and it is not disputed that both of them stand on an equal footing and there is no difference between these two classes of employees in that regard. To exclude the employees of private establishments will not, therefore, satisfy the test of intelligible differentia that distinguishes the employees of Government/Semi-Government institutions etc, grouped together from the employees of private establishments. It is true that a classification need not be made with mathematical precision but, if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case, the classification cannot be said to be a reasonable one.

15. It is, however, submitted on behalf of the respondents that the employees of private establishments have been left out as it is difficult for the University to verify whether or not a particular candidate is really a regular employee and

whether he will have a tenure for at least three years during which he will prosecuting his studies in the Three-Year LL. B. Degree Course. It is submitted that in making the classification, the surrounding circumstances may be taken into account. In support of that contention, much reliance has been placed on the decision of this Court in *Shri Ram Krishan Dalmia v. Shri Justice S.R. Tendolkar* [1959]1SCR279 . In that case, it has been observed by Das, C.J. that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. It follows from the observation that surrounding circumstances may be taken into consideration in support of the constitutionality of a law which is otherwise hostile or discriminatory in nature. But the circumstances must be such as to justify the discriminatory treatment or the classification subserving the object sought to be achieved. In the instant case, the circumstances which have been relied on by the respondents, namely, the possibility of production by them of bogus certificates and insecurity of their services are not, in our opinion, such circumstances as will justify the exclusion of the employees of private establishments from the evening classes.

20. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the Court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable. In the instant case, the foregoing discussion reveals that the classification of the employees of Government/Semi-Government institutions etc. by the impugned rule for the purpose of admission in the evening classes of ThreeYear LL. B. Degree Course to the exclusion of all other employees, is unreasonable and unjust, as it does not subserve any fair and logical objective. It is, however, submitted that classification in favour of Government and public sector is a reasonable and valid classification. In support of that contention, the decision in *Hindustan Paper Corporation Ltd. v. Government of Kerala* [1986]2SCR581 has been relied on by the learned Counsel for the respondents. In that case, it has been observed that as far as Government undertakings and companies are concerned, it has to be held that they form a class by themselves, since any project that they may make would in the end result in the benefit to the members of the general public. The Government and public sector employees cannot be equated with Government undertakings and companies. The classification of Government undertakings and companies may, in certain circumstances, be a reasonable classification satisfying the two tests mentioned above, but it is difficult to hold that the employees of Government/Semi-Government institutions etc., as mentioned in the impugned rule, would also constitute a valid classification for the purpose of

admission to evening classes of Three-Year LL. B. Degree Course. The contention in this regard, in our opinion, is without any substance.

22. This observation in Chitra Ghosh's case also been relied on by the High Court. It has been contended by the learned Counsel for the respondents that the question of reasonable classification has nothing to do with the identification of sources for admission by an educational institution. We are unable to accept the contention. It is true that an educational institution is entitled to identify sources from which admission will be made to such institution, but we do not find any difference between identification of a source and a classification. If any source is specified, such source must also satisfy the test of reasonable classification and also that it has a rational nexus to the object sought to be achieved. Indeed in Chitra Ghosh's case, it has also been observed that if the sources are properly classified whether on territorial, geographical or other reasonable basis, it is not for the courts to interfere with the manner and method of making the classification. It is very clear from this observation that the sources must be classified on reasonable basis, that is to say, it cannot be classified arbitrarily and unreasonably.

23. The principle laid down in Chitra Ghosh" case has been reiterated by this Court in a later decision in D.S. Chanchala v. State of Mysore (1971) Supp. SCR 608 It has been very clearly laid down by this Court that Government colleges are entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. Thus, it is now well established that a classification by the identification of a source must not be arbitrary, but should be on a reasonable basis having a nexus with the object sought to be achieved by the rules for such admission.

31. It has been already found that the impugned rule is discriminatory and is violative of Article 14 of the Constitution and, as such, invalid. The refusal by the respondents to admit the appellants in the evening classes of the Three-year LL.B. Degree Course was illegal. The appellants are, therefore, entitled to be admitted in the evening classes. It is, however, submitted on behalf of the respondents that all the seats have been filled up and, accordingly, the appellants cannot be admitted. As injustice was done to the appellants, it will be no answer to say that all the seats are filled up.

32. For the reasons aforesaid, the judgment of the High Court is set aside and the impugned rule for admission in the evening classes is struck down as discriminatory and violative of Article 14 of the Constitution and accordingly, invalid. We, however, make it clear that the striking down of the impugned rule shall not, in any manner whatsoever disturb the admissions already made for the session 1988-89. The respondents are directed to admit both the appellants in the second semester which has commenced from January, 1989 and shall allow them to complete the Three-Year LL.B. Degree Course, if not otherwise ineligible

on the ground of unsatisfactory academic performance. As was directed by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi* (1981)ILLJ103SC, the seats allocated to the appellants will be in addition to the normal intake of students in the college."

16. Their Lordships of Hon. Apex Court in 1992 (3) Supreme Court Cases Page 543 in the case of "*Chairman/Director Combined Entrance Examination (CEE) v. Osiris Das & others*" have held that reservation of 5% seats over and above the sanctioned strength of seats for sons and wards of employees of the institution was violative of Article 14 of the Constitution. The candidates cannot claim any legal right to such reservation on the basis of brochure published by the university providing for the reservation. Their Lordships have held as under: - "5. After hearing learned counsel for the parties and having regard to the facts and circumstances of the case, we are of the opinion that the High Court was not justified in issuing the interim orders. There is no dispute that the G.B. Pant University is aided and financed by the State Government and the University is an instrumentality of the State. Any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The reservation of seats for admission to the B.Tech. course in favour of the sons and wards of the employees of the University is violative of the doctrine of equality enshrined under Article 14 of the Constitution. There is no rationale for the reservation of the seats in favour of the sons and wards of the employees of the University nor any such reservation has any reasonable nexus with the object which is sought to be achieved by the University. The State Government, in our opinion, rightly insisted on the University to do away with the reservations in favour of the sons and wards of its employees. It is apparent that the University authorities accepted the suggestions made by the State Government and they rightly decided not to give any preferential treatment to the sons and wards of the employees of the University in the matter of admissions to the technical institution. Once the State Government and University both decided not to have any reserved quota for the sons and wards of the employees of the University, no legal right could be claimed by the respondent-students for being given preferential treatment in the matter of admission to the B.Tech. courses of the University. The learned Single Judge of the High Court failed to appreciate these aspects and granted the interim orders directing the University to admit the respondent-students. Once admission to an institution or a course of study is determined on merit on the basis of evaluation of marks at the Entrance Examination, no student securing lower marks has any legal right for admission much less a right enforceable in a Court of Law. Since the reservation of seats in favour of the sons and wards of the employees of the University was apparently violative of Article 14 of the Constitution, no court could issue directions for the enforcement of any such reservation. We are, therefore, of the opinion that the High Court was not justified in issuing the impugned interim orders. We accordingly allow these appeals and set aside the order of the High Court."

17. Their Lordships of Hon. Apex Court in A.I.R. 1997 Supreme Court Page 793 in the case of "Thapar Institute of Engineering & Technology v. State of Punjab" have held that the reservation for wards of employees in degree course and Diploma Courses was impermissible. Their Lordships have held as under: - "17. In civil appeal arising out of SLP (Civil) No. 10132 of 1995 there was reservation to the extent of 2% of seats for wards of the employees of the TIET and the Patiala Technical Education Trust and there was reservation to the extent of 5% of seats for wards of the employees of the Thapar Group of Industries. In civil appeal arising out of SLP (Civil) No. 10224 of 1995, there was reservation to the extent of 2% of seats for wards of employees in the Thapar Polytechnic and the Patiala Technical Education Trust. The TIET and the Thapar Polytechnic receive maintenance grants from the Government of Punjab and are Government aided educational institutions. It is no doubt true that the TIET has been declared to be a "deemed university" by the Central Government under the provisions of the University Grants Commission Act, 1956. But this does not mean that it is permissible for the TIET to depart from the principle laid down by this Court that admission should be made strictly on the basis of merit. The position of the TIET, a deemed University, cannot be better than that of the G.B. Pant University which is a full-fledged University and in view of the decision of this Court in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das it must be held that it was not permissible for the TIET to reserve 2% of the seats for the wards of the employees of the TIET and the Patiala Technical Education Trust and 5% of seats for the children of employees in the Thapar Group of Industries. The reservation of 2% of seats in the Thapar Polytechnic for wards of employees in the Thapar Polytechnic and the Patiala Technical Education Trust was also impermissible in view of the laid down by this Court in Unni Krishnan, J.P. and Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das. The directions contained in the letter of the Government of Punjab dated 16-9-1991, being in consonance with the said decisions, have been rightly upheld by the High Court and both the appeals are, therefore, liable to be dismissed."

18. In 2002 (1) Supreme Court Cases Page 428 in the case of "AIIMS Students' Union v. AIIMS & others", Their Lordships, while dealing with the admission to postgraduate courses in medical colleges, have held that when protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. The basic rule is equality of opportunity for every person in the country, which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best according to the rule of equal chance for equal marks. Their Lordships have held as under: - "32. Reservation is guided by consideration of ensuring allotment of a privilege or quota to, or conferral of State largesse on, a defined class or category of limited persons dispensing with the need of competition with another defined class of persons or remaining persons. Beneficiary of reservation is

necessarily a minor or smaller group of persons which deservedly stands in need of protection or push-up because of historical, geographical, economic, social, physical or similar such other handicaps. Persons consisting in reserved category are found to be an underprivileged class who cannot be treated on a par with a larger and more privileged class of persons and shall be denied social justice and equality unless protected and encouraged. Sources of recruitment or entry are carved out for the purpose of achieving a defined proportion of intermingling at the target or destination between two or more categories of such persons who though similarly situated or belonging to one class to begin with, have stood divided into two or more categories by fortuitous circumstances and unless allowed entry from two separate sources, one would exclude or block the other. No one of the two classes can be said to be weaker than the other. The factor impelling provision of different or separate sources of entry may not provide justification for reservation. Two sources of entry ensure an equal distribution between two segments of one society. The emphasis in reservation is on the subjects; the emphasis in providing sources of entry is on the subject-matter. Reservation is protective discrimination; provision for sources of entry is aimed at securing equal or proportionate distribution. The characteristics of the two may to some extent be overlapping yet the distinction is perceptible though fine.

44. When protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the *ex facie* deviation from equality. The basic rule is equality of opportunity for every person in the country, which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels and education like postgraduate courses. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped - the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation."

19. Their Lordships of Hon. Apex Court in 2002 (6) Supreme Court Cases Page 393 in the case of "Harshendra Choubisa & others v. State of Rajasthan & others" have held that the provision in State Government circular for adding bonus marks to the marks obtained in written examination by applicants, belonging to the district concerned and the rural areas of that district, was violative of Articles 14 and 16 of the Constitution of India. Their Lordships held as under: - "12. The second ground urged by the State is equally irrelevant and untenable. Most of the reasons given by us in the judgment just delivered in teachers" cases will hold good to reject this plea. No factual details nor material has been placed before us to substantiate that the spoken language and dialect varies from district to district. It will not be reasonable to assume that an

educated person belonging to a contiguous district or districts will not be able to effectively communicate with the people of the district in which he is appointed or that he would be unfamiliar with the living conditions and culture of that district. He cannot be regarded as an alien in a district other than his native district. If any classification has to be done in this regard, it should be based on a scientific study but not on some broad generalization. If any particular region or area has some peculiar socio-cultural or linguistic features warranting a differential treatment for the purpose of deploying personnel therein, that could only be done after conducting a survey and identifying such regions or districts. That is the minimum which needs to be done. There is no factual nor rational basis to treat each district as a separate unit for the purpose of offering public employment. Above all, it is wrong to assume that the candidates belonging to rural areas will be better suited to serve those areas than the candidates living in nearby towns. The criterion of merit cannot be allowed to be diluted by taking resort to such artificial differentiation and irrelevant assumptions. On the material placed before us, we have no hesitation in holding that the addition of bonus marks to the applicants belonging to the same district and the rural areas of that district would amount to discrimination which falls foul of Articles 14 and 16."

20. In the present case, the appellants have qualified the intermediate/plus two examination from the Central Board of Secondary Education. However, they have not been given the weightage/bonus of 10 marks but the same has been given to the students who have passed their intermediate examination from Uttarakhand Secondary Education Board. There is no data placed on record by the respondents why the weightage/bonus of 10 marks has been given to the students who have qualified from Uttarakhand Secondary Education Board. The minimum qualification for admission to the graduate level is intermediate. The students who qualify intermediate examination from Uttarakhand Secondary Education Board or Central Board of Secondary Education constitute a homogenous class. There cannot be a micro-classification merely on the basis of the fact whether the students have qualified their intermediate examination from the Uttarakhand Secondary Education Board or from the Central Board of Secondary Education for admission at graduate level. The classification made on the basis of the institution, from where the students have passed their intermediate examination, is unreasonable, arbitrary and discriminatory. Similarly, no reason has been assigned why the weightage of 05 marks has been given to the students from Kumaon Mandal and weightage of 03 marks to the Wards of teachers/employees of the University and also 10 marks to the students from feeder schools. The object of classification should always be to make admission to educational institutions on merit alone. The weightage/ bonus of 10 marks given to the students of feeder schools will also amount to weightage on the basis of geographical location of the schools. All the students of Uttarakhand, whether they have qualified their intermediate examination from Central Board of School Examination or from Uttarakhand Secondary Education Board, should

be eligible alike for seeking admission to the graduate level. The geographical classification is also violative of Article 14 of the Constitution of India, more particularly, when no reasons have been assigned for giving weightage/bonus of 10 marks to the students of feeder schools. Similarly, the weightage of 03 marks given to the teachers/employees of the schools is also bad in the eyes of law. Why there should be any preference at all for the wards of teachers/employees, has not been spelt out in the reply. The students, whether they have qualified their examination from Garhwal Division or from Kumaon Region, are to be treated alike. Even after a source is specified, such source must also satisfy the test of reasonable classification and also that it has a rational nexus to the object sought to be achieved. Learned Single Judge has erred in law by dismissing the petition, more particularly, when the discrimination is writ large in Clauses A-1, A-2, A-3 and A-4 of the Brochure-cum-Admission Form for the session 2016-2017.

21. No substantial material has been brought on record to justify giving weightage/bonus marks to the students who have qualified from a particular institution for the purpose of admission to graduate level. A discrimination has been made between Uttarakhand Secondary Education Board vis-à-vis Central Board of Secondary Education, region to region, employees versus employees, teachers versus teachers, even without there being any justification. It was necessary for the State to produce the sufficient material how the students of one particular institution require any special protection due to historical, geographical, economic, social, physical or similar such other handicaps.

22. There can be certain degree of preference but the same has to be reasonable and not excessive, with the rider, that the merit should not be sacrificed. The students who have qualified from the Uttarakhand Secondary Education Board cannot be termed as "Identifiable Group/Source". A group of students of one region cannot be given preference over the students belonging to other region.

23. The Government Order dated 28.8.2014, whereby the weightage has been provided for admission to all the degree colleges for the students who have qualified their intermediate education from Uttarakhand Secondary Education Board, is also unconstitutional. Appellants have challenged the conditions enumerated in Clause A-1, A-2, A-3 and A-4 of the Brochurecum-Admission Form. They were not required separately to challenge the Government Order dated 28.8.2014.

24. In normal circumstances, we would have asked the respondents to redo the entire admission at the graduate level in the State of Uttarakhand, however, we do not want to unsettle the settled things.

25. Accordingly, the special appeal is allowed. Judgment dated 23.11.2016 rendered by learned Single Judge in WPMS No.2391 of 2016 is set aside. The Government Order dated 28.08.2014 and Clauses A-1, A-2, A-3 and A-4 of the Brochurecum-Admission Form issued by Shahid Durga Mall Govt. School for the

Academic Session 2016-2017, being violative of Articles 14 and 15, are declared ultra vires the Constitution of India and struck down. Respondent no.4/Principal of Shaheed Durga Malli Govt. P.G. College, Doiwala, Dehradun, is directed to provide admission to the appellant nos.2 to 4 on the basis of the marks obtained by them in the qualifying examination in B.A./B.Sc./B.Com, in this Academic Session 2016-2017 as a special case. The deficiency of lectures shall be condoned. No costs.