

(1990) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petitions No's. 10943, 10168 etc. of 1990

Dileep Damodaran

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Andhra Pradesh Agricultural University Act, 1963 — Section 3
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 12, 15, 2, 3, 3(1)
Constitution of India, 1950 — Article 14, 15, 15(4), 226, 29
Electricity (Supply) Act, 1948 — Section 5
Industrial Employment (Standing Orders) Act, 1946 — Section 13
Jawaharlal Nehru Technological University Act, 1972 — Section 28, 34
University of Health Sciences Act, 1986 — Section 32, 5, 8

Citation : AIR 1991 AP 194 : (1991) 1 ALT 207

Hon'ble Judges : Sardar Ali Khan, J;A. Venkatrami Reddy, J

Bench : Division Bench

Advocate : Mr. M. Nageshwara Rao, for the Appellant; The Govt. Pleader, for Educational and Medical and Health, for the Respondent

Judgement

Sardar Ali Khan, J.—In this batch of writ petitions the common prayer is that the respondents should be directed, by a writ of mandamus, to implement Rule 9(4) of the rules issued in G.O. Ms. No. 62, Education (Rules), dated 10th February, 1989 and to admit the petitioners into the Medical, Engineering or Agricultural Course, as the case may be, for the academic year 1990-91, subject to eligibility and merit, under the category of "Children of Ex-Service and Defence Personnel."

2. The basic question that arises for consideration in this batch of writ petitions is the rule of reservation of 4% for the children of ex-servicement and defence personnel, including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh. It may be mentioned here itself that the above said rule is in conflict with the several other rules made by the different Universities fixing 1% reservation for the children of ex-servicemen and defence personnel, issued in the prospectus of the said Universities.

3. A brief reference to the facts arising in W.P. No. 10943 of 1990 may serve the purpose of indicating the manner in which the present controversy has arisen with regard to the percentage of reservation for the children of ex-servicemen and Defence Personnel who qualify in the EAMCET with Hall Ticket No. 61242, held for the academic year 1990-91, for admission into M.B.B.S. and other professional courses in the State of Andhra Pradesh. The petitioner is working as a Junior Warrant Officer, Indian Air Force, Air Force Academy, Deccan, Hyderabad. The boy has secured the rank of 1239 in the EAMCET. It is not in dispute that the father of the candidate has already put in about 28 years of service in Air Force and is serving in the State of Andhra Pradesh since 20-8-1987 thereby qualifying the candidate to claim a seat in the reserved quota under the category of "Children of Ex-Servicemen and Defence Personnel". The petitioner submits that the 1st respondent has issued rules called "Andhra Pradesh Professional Educational Institutions (Regulation of Admission into undergraduate Professional Courses through Common Entrance Test) Rules, 1989, to regulate admissions into various professional courses including Medical Courses. These rules have been issued in exercise of the power under S. 3 read with S. 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fees) Act, 1983, hereinafter referred to as "Act No. 5 of 1983", which has come into force from the academic year 1989-90. The rules apply to all professional educational institutions imparting professional courses in Engineering, Medical etc. Under R. 9(4) of the Rules framed in G.O.Ms. No. 62, dated 10th February, 1989, 4% of the seats shall be reserved for the children of Ex-Servicemen and Defence Personnel. The 2nd respondent-University of Health Sciences, however, has promulgated a rule by virtue of which only 1% of the seats are reserved in favour of the children of ex-servicemen and defence personnel in the order of preference as prescribed in Rule 8-E of the prospectus issued by the said University. These are the salient features of the case which have been mentioned in the affidavit filed in support of the writ petition, in the light of which the matter arising in this batch of writ petitions will have to be considered.

4. It needs to be mentioned here itself that at the time of final hearing of this batch of writ petitions, the learned counsel appearing for the Osmania University has submitted that the Osmania University is prepared to implement 4% reservations to the children of ex-servicemen and defence personnel. We duly note the said submission. In fact, he has filed a letter dated 11-10-1990, addressed by the Registrar of Osmania University to the Principal of University College of Engineering and Chairman, communicating a copy of resolution taken by the Standing Committee at its meeting held on 1-10-1990 to the effect that the reservation of seats in B.E/B. Tech. Courses as prescribed in G.O.Ms. No. 62 dated 10th February, 1989 and in vogue during 1989-90 be restored whereunder 4% of the seats are reserved to the children of ex-servicemen and armed personnel. In view of the above said letter and the submission made by the learned Standing Counsel for Osmania University, the writ petitions filed against

Osmania University are to be allowed.

5. It would not be out of place to refer to the relevant provisions of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fees) Act, 1983 (Act No. 5 of 1983) and then to make a study of the rules which have been framed under the said Act. S. 3 of Act No. 5 of 1983 provides for regulation of admission into educational institutions and S. 5 prohibits collection of capitation fee in the State of Andhra Pradesh. The fundamental object of the Act is to curb the undesirable practice of collecting capitation fee at the time, of admitting students into educational institutions and to avoid frustration among the meritorious and indigent students and to maintain excellence in the standards of education. It further aims to curb the practice of trading education as a commercialised activity and to ensure that the merited candidates get admission into the various professional courses like Medicine, Engineering, Agriculture etc. The term "capitation fee" has been defined in S. 2(b) of Act No. 5 of 1983 as any amount collected in excess of the fee prescribed under S. 7. The term "Educational Institution" has been given a wide definition under S. 2(c) in the following terms:

" "Educational Institution" means a college, a school imparting education up to and inclusive of Tenth Class or other institution, by whatever name called, whether managed by Government, private body, local authority or University and carrying on the activity of imparting education therein, whether technical or otherwise, and includes a Polytechnic, Industrial Training Institute and a Teachers Training Institute, but does not include a Tutorial Institution."

Section 3 of Act No. 5 of 1983 deals with the question of regulation of admission into educational institutions. S.3, in its present form, reads as hereunder:

"3. Regulation of admission into educational institutions:--

(1) Subject to such rules as may be made in this behalf, admission into educational institutions shall be made either on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed :

Provided that admission into Medical and Engineering Colleges shall be made only on the basis of the ranking assigned in the Common Entrance Test conducted as aforesaid.

(2) The admission into educational institutions under sub-sec. (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

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A close reading of the abovesaid section reveals the fact that admissions into Educational Institutions are regulated in accordance with the rules that may be made in this behalf and such admissions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the Entrance Test conducted by such authority and in such manner as may be prescribed. It is significant to note that in sub-sec. (2) of S. 3 it is provided that the admissions into educational institutions under sub-sec. (1) shall be subject to such rules as may be made by the Government in regard to the reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974. It must be pointed out that the term "and other categories of students as may be notified by the Government in this behalf" was inserted by A.P. Act No. 1 of 1984 with effect from 25-7-1983. This point needs to be clarified at the very outset because a lot of argument has been made on the question of reservations which are made in favour of Scheduled Castes, Scheduled Tribes and Backward Classes, termed as "statutory reservations" and reservations with regard to other categories of students as may be notified by the Government in this behalf, which are termed as "non-statutory reservations". It has also been argued by the several counsel appearing for the Universities that while the rules can provide for reservations in favour of Scheduled Castes, Scheduled Tribes and Backward Classes, which are statutory reservations, there is no power to promulgate rules with regard to reservations pertaining to other categories of students like for instance children of ex-servicemen and defence personnel. It must, however, be kept in view that the power to provide reservations for other categories of students also has been conferred on the State Government by virtue of Act No. 1 of 1984, which has come into force with effect from 25-7-1983. Sub-section (3) of S. 3 provides that it shall be lawful for the Government to admit students belonging to other States on reciprocal basis and the nominees of the Government of India, into Medical and Engineering Colleges in accordance with such rules as may be prescribed. The proviso to sub-sec. (3) states that admission of students into the Regional Engineering College, Warangal to the extent of one-half of the total number of seats shall be in accordance with the guidelines issued by the Government of India, from time to time. We do not visualise any difficulty in understanding and interpreting the precise and clear cut provision of S. 3. The language of the section is clear and the object which it seeks to achieve is also quite clear and does not admit of any ambiguity. We have given a brief analysis of the abovesaid section because it occupies prime importance for the purpose of discussion of the various points which have been expressed in the present batch of writ petitions.

6. We may also refer now to the provisions of S. 12 of Act No. 5 of 1983 which provides that the provisions of the Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Under S. 15 of the Act power has been given to the State Government to

make rules, by notification, for carrying out all or any of the purposes of the Act. These statutory rules are to be placed before each House of the State Legislature if it is in session and, if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session, or in two successive sessions as is the usual practice in such matters. Suffice it to say that these rules are given the statutory status and have the imprimatur of the State Legislature before they come into force.

7. A reference now may be made to the Rules which have been promulgated in pursuance of Act No. 5 of 1983 under G.O.Ms. No. 62, Education (Rules), dated 10th February, 1989. These rules have been promulgated in exercise of the powers conferred by S. 3 read with S. 15 of Act No. 5 of 1983 in supersession of all the orders in force on the subject. The rules are concerned with the admissions of students into the first year of the undergraduate Professional Courses, viz., Engineering including Technology Agriculture including Veterinary and Home Sciences and Medical (all systems of Medicine, including Dental). It must be mentioned here that the abolition of capitation fee for admission into these prized courses of Engineering, Medicine and Agriculture is with a view to ensure that the deserving students are not overlooked in the matter of admissions. The policy of capitation fee is, therefore, indelibly linked up with the question of excellence of education. It is not merely a case of abolishing payment of capitation fee by some of the undeserving students and getting a berth in the professional courses which are very much in demand in the present context of the situation existing in our country but it is a direct provision to ensure the recognition of merit and talent by providing machinery for entrance test through which each and every candidate will have to go through before he can lay a claim for a seat in one of the professional courses. In sub-rule (2) of R. 1 of the rules framed in G.O.Ms. No. 62 dated 10th February, 1989, it is provided that in order to gain admission into the first year of the undergraduate professional courses through Common Entrance Test the candidate shall apply to all the Professional Educational Institutions including those functioning under the minority communities, imparting professional courses in Engineering (including Technology), Medical (including Dental) and Agricultural Sciences (including Veterinary and Home Sciences) for the first year undergraduate course of which admissions shall be made through a Common Entrance Examination, called "the Engineering, Agricultural Sciences and Medical Common Entrance Test" (EAMCET). The point which needs to be stressed here is that the concept of EAMCET has been introduced only through the rules which have been promulgated under Act 5 of 1983 and all admissions to these courses are necessarily regulated through EAMCET. Before the promulgation of the rules, there was no such entrance test for the professional courses, referred to above. There are several rules dealing with various aspects of the problem which need not be referred to in any great detail for the purpose of this judgment. However, it would be necessary to refer to such of the rules which have a direct bearing on the matter. Under Rule 4 eligibility criteria for admission is provided. It is stated

therein that admission into various courses in different professional educational institutions shall be governed by the rules of admission of the respective Universities in addition to the rules and regulations prescribed herein. The eligibility criteria for admission into various categories of professional courses is then indicated in the other provisions of the rule. But the point to be remembered here is that admissions into various categories of professional courses in different educational institutions are to be made by the respective Universities. In addition to the rules and regulations prescribed in G.O. Ms. No. 62, dated 10th February, 1989, it is not by the rules of admissions of the respective Universities alone that the eligibility criteria for admission is determined but it is the combined effect of the rules made by the Universities as well as the State Government which will have to be studied to determine the eligibility criteria of a particular candidate.

8. In Rule 5 it is provided that the common entrance test which shall be conducted by the Convenor appointed by the State Council on such dates and at such centres specified by the State Council in consultation with the Chairman of the Entrance Test. In Rule 6 the preparation of merit list and assigning ranking is to be done in accordance with the procedure laid down therein. The candidates who have secured qualifying marks in the Entrance Test and the candidate belonging to the Schedule Caste and Scheduled Tribe Communities to whom qualifying marks have not been prescribed, shall be assigned the ranking in the order of merit on the basis of the aggregate marks obtained in all the three relevant subjects. Under Rule 7 procedure for admission into Government Colleges, Campus/Constituent Colleges of Universities and Regional Engineering Colleges is provided. Rule 8 deals with the procedure for admission into private institutions.

9. Coming to Rule 9, it may be seen that it is the relevant rule providing reservations for admission. It may be necessary to re-produce the relevant portions of the said rule which are in the following terms:

"9. Rules of reservations for admission:--

They shall apply to all institutions including private institutions.

(1) Regionwise reservation of seats:--

(a) Admission to 85% of the seats in each course, excluding the seats which are exempted from the need of Common Entrance Test, shall be reserved for the local candidates and 15% of the seats shall be left over for Open Competition as specified in the Andhra Pra-desh Educational Institutions (Regulations and Admission) Order, 1974 as amended in G.O. Rt No. 646, Edn. (W) Department, dated 10-7-1979.

(b) In respect of State-wide institutions, admission into 85% of seats, excluding the seats which are exempted from the need of Common Entrance Test, in each Course, shall be reserved for the candidates belonging to the three local areas in

the State, namely, Andhra University area (Andhra), Osmania University area (Telangana) and Sri Venkateswara University area (Rayalaseema) in the ratio of 42 : 36 : 22 respectively and the balance of 15% of seats shall be lifted for open competition.

At present Regional Engineering College, Warangal (including seats allotted to the candidates of Andhra Pradesh Regional Engineering Colleges outside the State), Government Dental College, Hyderabad and Government Siddhartha Medical College, Vijayawada have been declared as State wide institutions.

(c) The seats in all the private colleges (including minority institutions) shall be pooled up course wise and distributed among the three regions of the State, namely, Andhra University area (Andhra), Osmania University area (Telangana) and Sri Venkateswara University area (Rayalaseema) in the ratio of 42 : 36 : 22 respectively as provided under sub-rule (4) of Rule 8".

The other portions of the rule, which require consideration, are sub-rules (3) and (4) of the said Rule 9, which are in the following terms:--

"(3) Reservation of seats for Women:--

Subject to permissibility in the rules and regulations of admission of the respective Universities, 30% of the seats in each course in each institution shall be reserved in favour of women candidates from all categories, i.e., Open Competition, Scheduled Castes, Scheduled Tribes, Backward Classes - Groups "A", "B", "C and "D" and army quota. This rule of reservation shall not be applicable if woman candidates selected on merit in each category from 30% or more of the seats therein. When the number of woman candidates falls short of this percentage, it would be made up by replacing the last selected male candidates by women candidates in that category. In the absence of suitable women candidates the seats shall be filled in with men candidates.

(4) Other categories of Reservations:--

Seats shall also be reserved in each institution in respect of the following categories to the extent indicated against each of them. However, if suitable candidates are not available in any category, they shall be filled in with the candidates in open competition.

1% for Physically handicapped.

1% for National Cadet Corps

1% for Games and Sports

4% for the Children of Ex-Servicemen and Defence Personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh".

10. The point arising in this batch of writ petitions will require a detailed examination of the provisions of sub-rules (3) and (4) of Rule 9, extracted

above. It may be mentioned herein that while sub-rule (3) deals with the question of reservation of Seats for women to the extent of 30% of the seats in each course in each institution, the sub-rule dealing with other category of reservations does not provide any rule for permissibility in the rules and regulations of admissions of the respective Universities. The rule is in positive terms and deals with the question of seats which are to be reserved in each institution in respect of categories which are mentioned therein. In so far as the reservation of 1% for Physically handicapped, 1% for National Cadet Corps and 1% for Games and Sports are concerned, there is no dispute about the fact that the 1% quota for such categories is being implemented. It may also be mentioned that in so far as the question of reservations in favour of Scheduled Castes, Scheduled Tribes and Backward Classes are concerned, the quotas prescribed under the said rule are being strictly followed. It is only with regard to the question of rule of reservation for the children of ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh that a controversy has arisen. It would be necessary to stress the fact that the rule provides 4% reservation for the children of ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh, as compared to the earlier rule of reservation of 1% in favour of children of ex-servicemen and defence personnel. In the present rule, apart from the children of ex-servicemen and defence personnel, the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh have also been included. The rule, therefore, covers a far wider section of the population of ex-servicemen and defence personnel because it includes not only the Border Security Force and Central Reserve Police Force but also provides that the residence of the said defence personnel is the criterion for the application of the rule of reservation of 4%. It is not the domicile of the ex-service men or the defence personnel, as the case may be, but it is the residence in Andhra Pradesh which alone is suffice to claim a seat under the 4% reservation in favour of children of ex-service men and defence personnel including the Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh. This rule will have to be seen again in contrast with the rules of the several Universities which have been promulgated in the prospectus issued by the various Universities. In the University rules no such provision is made for the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh. We would like to refer in detail on the disparity in the two rules later in this judgment to point out the essential difference existing between the rules made by the Universities and the rule framed under G.O. Ms. No. 62 as such.

11. The University of Health Sciences Act, 1986 (Act No. 6 of 1986) is an Act which provides for the establishment and incorporation of a Teaching and Affiliating University in the State of Andhra Pradesh for the purpose of ensuring efficient and systematic education, training and research on the Allopathic and Indian systems of Medicine, Dentistry, Pharmacy and Nursing. The University so

established under the Act is known and styled as "the University of Health Sciences". It is a body corporate having perpetual succession and a common seal and its objects are to maintain a uniform curriculum in all the institutions affiliated to it, to conduct a common entrance examination to the courses in all the institutions affiliated therein; and to improve the standards of Medical Education including Research. The University enjoys wide powers, as enumerated in S 5. U/S. 8 transfer of affiliation of certain colleges and institutions to the University is provided. In the First Schedule to the Act a list of 22 Medical Colleges is given which are disaffiliated from the several Universities mentioned therein and affiliated to the University of Health Sciences. The control and management of the Medical Colleges, teaching hospitals, Dental Colleges etc., are vested in the Government and the administrative control is to be exercised on the said colleges by the State Government. These colleges are now being maintained by the exchequer of the State Government. U/S. 5(b) of the University of Health Sciences Act the University is given the power to conduct a common entrance examination for all the Medical Colleges in the respective systems of medicine for the selection of students. U/S. 32(a)(b) the University has power to pass Ordinance for the admission of the students to the Colleges affiliated to the University and their enrolment as such. It is significant to note that there is no whisper in the said Act of 1986 about providing reservations to the students who are admitted to the various Medical Colleges affiliated to the University of Health Sciences. It is quite true that in several Universities like Osmania University and others certain rules have been framed for providing reservations to the children of ex-servicemen and defence personnel but with the formation of the University of Health Sciences those rules cannot be deemed to be any longer in force as all the Universities have been disaffiliated from the said colleges and affiliated to the University of Health Sciences. However, as pointed out above, there is no provision in the Act which provides for reservations in favour of candidates who belong either to Scheduled Caste or Scheduled Tribe or Backward Class or with regard to other categories including the children of ex-servicemen and defence personnel but a study of the rules issued in the prospectus by the said University of Health Sciences clearly shows that a rule for reservation has been provided in the prospectus issued by the University. The rules which are issued as a prospectus are known as Rules for admission into First Year MBBS/BDS Courses for the Academic Year 1990-91. Under R. 8 of the prospectus rules reservation of seats is provided for, as indicated therein. It is under R.8-E that the specific rule with regard to "the children of servicemen and ex-servicemen" is provided and it is in the following terms:--

"8. E. Reservation For The Children of Servicemen and Ex-servicemen:--

Out of the available seats for admission by the University of Health Sciences 1% of the seats shall be reserved in Statewide institutions and in each local area for non-statewide institution in respect of MBBS and BDS Courses for the children of Ex-Service men and Servicemen belonging to the State of Andhra Pradesh including those serving in other States and persons who are posted, and

stationed in the State of Andhra Pradesh on the date of submission of application.

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Here we would like to point out again that under the above said Rule 8-E 1% of the seats are reserved in statewide institutions and in each local area for non-Statewide institutions in respect of MBBS and BDS courses for the children of Ex-Servicemen and servicemen belonging to the State of Andhra Pradesh including those serving in other States and persons who are posted and stationed in the State of Andhra Pradesh on the date of submission of application. We have already pointed out that if this rule is read in contrast with R. 9(4) of the Rules framed under G.O. Ms. No.62, Education, dated 10th February, 1989, it clearly shows that the rule made by the University is confined only to the children of ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh- More over, a large chunk of such ex-servicemen and servicemen who are to claim the benefits of the rule of the University should belong to the State of Andhra Pradesh which means that they must be domiciled in the State of Andhra Pradesh and the only other persons who can claim for the reserved quota of 1% are those posted and stationed in the State of Andhra Pradesh. The rule is, therefore, limited in its scope and is to cover only a smaller number of defence personnel as it is not in such wide terms as the rule made by the State Government under R. 9(4) of G. O. Ms. No. 62, dated 10th February, 1989.

12. It may be mentioned that the Andhra Pradesh Agricultural University is a creation of the Andhra Pradesh Agricultural University Act, 1963 (Act No. 24 of 1963). The said University has been constituted u/S.3 of the said Act and the object of the University is to provide education mainly for the rural people of the State of Andhra Pradesh in agriculture and to promote research field and extension programmes in agriculture and agricultural production. U/S.5 of the said Act it is provided that the Government may reserve seats in colleges under the University for members of the socially and educationally backward classes, Scheduled Castes and Scheduled Tribes in accordance with such principles as may, from time to time, be determined by the Government in this behalf. It may be noticed that this provision is also on the same lines as in the case of J.N.T.U. Act and the University is given the power to make reservations in accordance with the principles laid down by the State Government. There is no other provision in the Act which invests the University with the power of making reservations in favour of other categories like the children of ex-servicemen and defence personnel.

13. Jawaharlal Nehru Technological University has come into being as a result of S. 28 of the Jawaharlal Nehru Technological University Act, 1972. Under the said section the Government Engineering Colleges at Anantapur and Kakinada, the Nagarjuna Sagar Engineering College, Hyderabad, the Government College of Fine Arts and Architecture, Hyderabad and the Regional Engineering College, Warangal have been disaffiliated from the parent Universities and have been

formed into and maintained as constituent colleges of the Technological University. The Regional Engineering College, Warangal has been made an associate college of the Technological University. U/S. 34 of the said Act, it is provided that the University shall reserve seats in its constituent colleges for the members of the socially and educationally backward classes, Scheduled Castes and Scheduled Tribes in accordance with such principles as may, from time to time, be determined by Government in this behalf. It is also significant to note that there is no provision in the J.N.T.U. Act, 1972 providing, inter alia, reservations with regard to other categories like N.C.C., Physically handicapped, Games and sports quota or the children of ex-servicemen and defence personnel. It is only in the prospectus issued by the University that a provision has been made for reservation of seats in clause V for the children of armed personnel to the extent of 2 seats. It is also mentioned in the said rule of the prospectus that 85% of the seats available to Andhra Pradesh are reserved at Regional Engineering Colleges for the "Local Candidates" in relation to the local areas in respect of Andhra University (including Nagarjuna University), Osmania University (including Kakatiya University) and Sri Venkateswara University in the ratio of 42 : 36 : 22 respectively. These 85% of the seats are made available only from the quota of seats which are allocated to Andhra Pradesh and have nothing to do with the other seats which may be filled up by the Central Government.

14. It is evident that the quota fixed for the children of ex-servicemen and defence personnel is 1%. The contention raised in the counter affidavit filed by the said University is that reservation of seats for candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes are statutory reservations to be implemented by all University Colleges as required in S.3 of the A.P. Educational Institutions Act (A.P. Act No. 5 of 1983) which reservations for orthopaedically handicapped, N.C.C., Sports and defence are non-statutory. Whenever there is a change in the percentage of statutory reservations for Scheduled Castes, Scheduled Tribes and Backward Classes, the University changes the percentage of non-statutory reservations in order that the percentage of seats to be filled on merit from Open Category is maintained at least at 50% level. It is further stated that one seat in each course is being offered under this category of 1% and the children of ex-servicemen are eligible for one seat in each of branches of civil, electrical, mechanical and electronics and communication engineering. The counter further proceeds to state that admissions into the J.N.T. University are made into each course separately but not to all courses combined. In Paras 8 and 9 of the counter affidavit it is stated that special reservation of seats under categories of NCC, Sports and Games, Orthopaedically handicapped and children of ex-servicemen are non-statutory while the reservation of seats for candidates under the categories of SC, ST and BC are statutory. It is further contended that the Andhra Pradesh Educational Institutions Act, 1983 (Act No. 5 of 1983) and the rules framed thereunder as per G.O. Ms. No. 62 Education dated 10-2-1989 cannot provide for reservation

for Scheduled Castes/ Scheduled Tribes and Backward Classes as S. 3(2) of the Act makes it clear that reservations for other categories is not provided in the said Act. Therefore, it is submitted that S. 15, which has also been referred to, states that the Government may, by notification, make rules for carrying out all or any of the purposes of this Act. It would be necessary to dispel this controversy at this stage itself by making a specific reference to S. 3(2) of Act 5 of 1983. U/sub-s. (2) of S. 3 it is provided that admission into educational institutions u/sub-s. (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be made by the Government in this behalf and the Andhra Pradesh Educational institutions (Regulation of admission) Order, 1974. The term "other categories of students as may be made by the Government in this behalf" has been inserted by Act 1 of 1984 with effect from 25-7-1983. Therefore, it is not open for the University to contend that the provision of 4% of reservations in favour of children of ex-servicemen and defence personnel is not provided u/ S. 3(2) of the Act. This argument is based on a falacy as it overlooks the amendment which has been effected in S.3(2) thereby authorising the Government to make reservations with regard to other categories of students as may be notified by the Government. The further submission made by the learned counsel for the 4th respondent-University is that the preamble of Act 5 of 1983 itself makes it clear that the Act has been promulgated to curb the collection of capitation fee and cannot be extended to provide a rule of reservation for categories like NCC, sports and Games and physically handicapped and Ex-Servicemen of Defence personnel. We have already pointed that the abolition of capitation fee itself is having an overall effect on the system of admissions to the professional courses and has been brought into being with a view to ensure excellence of education. In so far as private Engineering Colleges are concerned, they are already following the rule of reservation of 4% to the children of ex-servicemen and defence personnel, the admissions into which also now are regulated through EAMCET. Only such candidates who qualify in EAMCET in accordance with such rules can claim a seat in the Engineering Colleges. The rule of reservation of 4% therefore under R. 9(4) of the said Rules is also binding on the University as it has been promulgated in pursuance of S. 3(2) read with S. 15 of Act 5 of 1983. The University is already following the percentages of reservations in regard to ST/ SC and BC and with regard to other categories like NCC, Orthopaedically handicapped etc. There is no reason, therefore, why the rule of 4% of reservation in regard to the children of ex-servicemen and defence personnel should not be followed by the Universities.

15. It may be pertinent to observe here that in so far as the general policy of reservations is concerned, be it in favour of S.C., S.T., B.C., or any other categories like NCC or the defence personnel, it is necessary to have some form of uniformity with regard to the percentages prescribed by the authorities. It cannot be left to the Universities to determine various percentages in accordance

with their own assessment of the situation of reservations required by various categories of persons. The question of reservation is of national importance and must be decided at the State Government level which can promulgate the rule to be uniformly applied by all the educational institutions. This policy decision can be taken by the Government taking into consideration various factors which are relevant for the purpose. The needs of a growing industrial society like India are to be assessed in the light of technical data and various other factors of economic and political nature which can be assessed only at the Governmental level. The educational institutions are no doubt free in pursuance of their academic activities to promulgate such rules which are necessary for the upkeep of high standards of education in various fields but they cannot be entrusted with the task of providing reservations in favour of a particular class of society in accordance with their whims and fancies. From this point of view also we find enough justification in holding that the State Government alone is the authority which can provide rules for reservations with regard to other categories also; apart from SC, ST and BCs.

16. Mr. M. Nageswara Rao, learned counsel for the petitioners has submitted that the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act No. 5 of 1983) has been promulgated with a view to regulate admissions into educational institutions and to curb the undesirable practice of collecting capitation fee at the time of admitting students into educational institutions. In other words, the main object of the Act seems to be to ensure excellence of education and to provide an opportunity to the meritorious and deserving candidates to gain admissions in the coveted seats in Engineering and Medical Colleges. The learned counsel has also stressed the point that u/S. 12 read with S. 15 of Act 5 of 1983 the provisions of the Act shall have the effect notwithstanding any thing inconsistent therewith contained in any Other law for the time being in force. It is, therefore, argued that G.O.Ms. No. 62 Education, dated 10-2-1989 has been promulgated u/Ss.3 and 15 of Act 5 of 1983 and, therefore, must prevail over other rules which have been made by the Universities in regard to reservation of seats for the children of ex-servicemen and defence personnel.

17. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, the Supreme Court held that rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation. The rules framed under Act 5 of 1983 are statutory rules which have been laid before the Houses of the Legislature in accordance with the provisions of S. 15 of Act 5 of 1983 and are therefore to be considered as rules which are part and parcel of Act 5 of 1983 itself.

18. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, the Supreme Court upheld the reservation of seats in Maulana Azad Medical College,

Delhi in respect of certain categories as provided in the college prospectus relating to the eligibility for admission to the college and it was held that the reservation made in favour of the sons and daughters of residents of Union Territories other than Delhi which are known to be comparatively backward, is not violative of Arts. 14, 15 and 29 of the Constitution of India. It may be noticed that in this case the rule given in the college prospectus was given effect to for the purpose of reservation as there was no other rule made by the State Government or Central Government. In *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, also it has been laid down that the Government which runs the colleges has the right to make a selection out of a large number of candidates and for this purpose they can prescribe a test of their own which is not against any law. The University Act merely prescribes a minimum qualification for entry into the higher courses of study. The provisions of law do not make it incumbent upon the Government to make their selection in accordance with the marks obtained by the applicant candidates at the qualifying examination. Merely because the Government tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, their action cannot be impeached. The purport of this judgment is, therefore, clear that the Government has the power to make rules with regard to admission into the various professional colleges through the entrance test. Similarly in *R. Chitralekha and Another Vs. State of Mysore and Others*, *Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others*, and *G.Padmaja v. University of Health Sciences*, 1990 (1) ALT 375 the same principle has been upheld that the State Government may lay down eligibility qualification for admission to such courses in the Medical Colleges in accordance with the regulations made by the Indian Medical Council. In *Dinesh Kumar v. Motilal Nehru Medical College Allahabad*, AIR 1986 SC 1877:1987 All LJ 189 the Supreme Court upheld the principle of reservation on all India basis of 15% of total seats for MBBS/ BDS Courses and 25% for Post-graduate Courses fixed and held that the extent of such reservations depends on several factors including opportunities for professional education in a particular area, the extent of competitive level of education development of the area and other relevant factors and, therefore, it is open for the State Government to take a decision with regard to the extent of reservations keeping in view the needs of the particular area and other relevant factors governing the matter.

19. Sri M. Nageswara Rao, learned counsel for the petitioners, also relied upon several decisions to emphasize the point that Act No. 5 of 1983 has got an overriding effect over any other law for the time being in force. In *Dev Kumar singhji Kasturchandji Vs. State of Madhya Pradesh and Others*, and *Sheo Varan Singh Vs. State of U.P.*, it has been held that the expression "for the time being in force" means not only the law which is in existence at the time when a particular Act is promulgated but all future Acts also and, therefore, the overriding effect is given over all such laws which may come in future and which may be for the time being in force. Moreover, the expression "notwithstanding

anything inconsistent therewith contained in any other law for the time being in force" is in the nature of a non obstante clause and therefore the clear cut effect of such a clause is that the provisions of the Act shall prevail over any other provision contained in any Act which may be for the time being in force. The same principle has been upheld in *K. Parasuramaiah Vs. Pokuri Lakshamma, and Union of India (UOI) and Another Vs. G.M. Kokil and Others*, about the scope and effect of a non obstante clause. Another submission made by Sri M. Nageswara Rao, learned counsel for the petitioners, is that the expression "to the extent indicated" occurring in R. 9(4) of the rules framed under G.O. Ms. No. 62 dated 10-2-1989 cannot be construed to mean that it may be less than 4%. In the said rule reservation to the extent of 4% has been provided in favour of the children of Ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Force residing in Andhra Pradesh. The principle laid down in *The State of Uttar Pradesh Vs. C. Tobit and Others*, ; *Commissioner of Income Tax, Madras Vs. Indian Bank Ltd.*, and *Shriram and Others Vs. The State of Bombay*, is that if the words of a statute are in themselves precise and unambiguous those words should be expounded in their natural and ordinary sense. In view of the above principle, it is clear that "to the extent indicated" does not mean that it can be less than 4% as provided in the said rule. In other words the extent of reservation is 4% and that Figure has to be achieved as a matter of legal necessity for providing reservations in favour of the children of ex-servicemen and defence personnel.

20. Sri V. Venkataramanayya, learned counsel appearing for the University of Health Sciences, has made three broad submissions which are as follows:-- His first submission is that reservations in favour of Scheduled Castes, Scheduled Tribes and Backward Classes have been provided under Art. 15(4) of the Constitution of India. These are all statutory reservations which cannot be equated with the reservations made for other categories. His second submission is that the University of Health Sciences Act, 1986 is a special enactment which provides for reservations for various categories under which rules have been promulgated in the prospectus issued by the University. Therefore, these provisions of University of Health Sciences Act being of a special nature must prevail over the general Act like Act No. 5 of 1983. The third submission made by the learned counsel is that the principle of University Autonomy must be jealously guarded and if a rule of reservation has been provided by the University, the same must be made to prevail over other rules of reservation made by the State Government.

21. In so far as the first submission made by the learned counsel for the University of Health Sciences is concerned, it may be seen that Art. 15(4) of the Constitution of India falls under Chapter III dealing with fundamental rights. It is provided that nothing in this Article or in cl. (2) of Art. 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. It is no doubt true that in so far as the reservations or a

special provision for the advancement of any socially and educationally backward classes of citizens for the Scheduled Castes and Scheduled Tribes are concerned they have been given the primacy of place in the Constitution itself but it would be wrong to suggest that reservations with regard to other categories are non-statutory reservations and. therefore, they can be varied or altered by the respective Universities. There is no justification for treating the reservations made in regard to other categories as reservations of a nature which do not have the sanction of a statute. We have already pointed out that in sub-s. (2) of S. 3 of Act 5 of 1983 an amendment has been introduced by Act No. 1 of 1984 with effect from 25-7-1983 providing, inter alia, for making such rules as "may be necessary by the Government in regard to reservations for other categories of students as may be notified by the Government in this behalf. Thus, other categories" have been placed on par with regard to reservation of seats in favour of the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes. Therefore, the submission that these reservations are of non-statutory character does not appear to be valid in the presence of the wording referred to above in sub-s. (2) of S. 3 which empowered the State Government to promulgate such rules as may be necessary in favour of other categories as well.

22. The second submission made by the learned counsel for the University of Health Sciences that the University of Health Sciences Act is a special law and therefore the principle of "*Generalia Specialibus non derogant*" should be applied. It is evident from a reading of the University of Health Sciences Act, 1986 that there is no provision in the Act which deals with the question of reservation in favour of other categories including the children of ex-servicemen or defence-personnel. The learned counsel has not been able to point out any particular provision in the Act which empowers the University to promulgate a rule providing reservation in favour of the children of ex-servicemen and defence personnel. It is only in the prospectus issued by the University of Health Sciences that a rule to that effect has been provided in the shape of R. 8-E of the Rules of the prospectus. R. 8-E of the Rules of the prospectus provides that out of the available seats for admission by the University of Health Sciences 1 % of the seats shall be reserved in Statewide institutions and in each local area for non-statewide institution in respect of MBBS and BDS Courses for the children of Ex-Servicemen and servicemen belonging to the State of Andhra Pradesh including those serving in other States and persons who are posted and stationed in the State of Andhra Pradesh. In so far as reservations for SC and STs are concerned, there is no denial of the fact that the quota of reservations is being allotted to these categories as provided in R. 8 of the prospectus rules which is in consonance with R. 9 of the Rules made by the State Government under G.O. Ms. No. 62. Therefore, the question to be considered is whether a rule provided in the prospectus issued by the University can be treated as on par with a statutory rule promulgated under Act 5 of 1983. The rule of reservation contained in G.O.Ms. No. 62 dated 10-2-1989 with regard to the children of ex-servicemen and defence personnel is a statutory rule. The rule of reservation

made by the University does not derive its sanction or strength from any section in the University of Health Sciences Act but is a rule in the prospectus issued by the University. We are clearly of the opinion that the two rules, one made by the State Government in pursuance of a statute viz., Act No. 5 of 1983 and another rule promulgated by the University in the prospectus cannot be equated with each other. Therefore, the argument that the rule of the University is a special rule which must prevail over a general rule promulgated in G.O.Ms. No. 62 dated 10-2-1989 does not hold water. The principle of special law and general law could be made applicable to two different statutes as such but if the rules are entirely of two different counts one which has been issued as a rule of prospectus and the other rule which is a full pledged statutory rule, it is obvious that rule having the statutory force will prevail over the other. We have also pointed that the rule providing 4% reservations for the children of ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh is of a far wider nature than the rule of the prospectus which makes reservations of only 1% in favour of the children of ex-servicemen and servicemen belonging to the State of Andhra Pradesh including those serving in other States and persons who are posted and stationed in the State of Andhra Pradesh on the date of submission of application. The rationale of the rule promulgated by the State Government enhancing the quota to 4% is based upon the fact that it provides residence as the qualification for the children of ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Police Force in Andhra Pradesh whereas the rule viz., 8-E made in the prospectus insists upon the children of ex-servicemen and servicemen belonging to the State of Andhra Pradesh including those serving in other States who are having domicile in the State of Andhra Pradesh and persons who are posted and stationed in the State of Andhra Pradesh. The difference between the concept of residence and domicile is well-known and such persons of the defence personnel who are residing in the State of Andhra Pradesh are bound to be larger in number as compared to those who are domicile in the State of Andhra Pradesh and who are discharging their duties either in the State of Andhra Pradesh or outside the State, as the case may be. More over, it is to be taken into consideration that the rule of the State Government includes the children of Border Security Force and the Central Reserve Police residing in Andhra Pradesh which is conspicuously absent in the rule made by the University in the prospectus. When the rule promulgated by the State Government caters to the needs of a far larger number of persons it is only fit and proper that the reservation should be enhanced to 4% to give adequate coverage to the children of such persons who come within the ambit and scope of the said rule.

23. Sri V. Venkataramanayya, learned counsel appearing on behalf of the University of Health Sciences, has relied upon several decision of the Supreme Court to substantiate his argument that the University of Health Sciences Act, 1986 shall be construed as a special Act for the purpose of reservations of seats

in favour of the children of ex-servicemen and defence personnel. This principle has been upheld in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, . The principle in the above decision that general provision yields to the special provision has been upheld and the rule has been described as laid down in *Pretty v. Solly* (1859-54 ER 1082) quoted in *Craies on Statute Law* at page 206 which is in the following terms:--

"The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

It is significant to note that the provisions must be contained in the enactment which has been promulgated with regard to the same matter, one in a specific form and the other in general enactment. In case of a conflict between the two enactments undoubtedly the provision in the specific enactment will prevail. However, in the present case there are no such two enactments or two statutory rules which deal with the matter of reservations. The only statutory rule, which holds the field and provides reservations, is R. 9(4) of the . statutory rules promulgated by the State Government in G.O. Ms. No. 62, dated 10-2-1989. The other rule is merely a rule contained in the prospectus of the University and therefore it is difficult to visualise how the rule of the prospectus can be considered to be a special enactment with regard to the reservation of 4% for the children of ex-servicemen and defence personnel. In *U.P.S.E. Board v. Hari Shanker*, AIR 1979 SC 65 : 1978 Lab IC 1657 the Supreme Court considered the scope of the maxim "*Generalia specialibus non derogant*". The matter arising in this decision of the Supreme Court was with regard to the Industrial Employment (Standing Orders) Act (Act 20 of 1946), Ss. 13-B and 5 of the Electricity (Supply) Act, 1948. The Supreme Court held relying on a decision in *Vera Chuz* (1884) 10 AC 59) that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government u/S. 13-B or certified by the Certifying Officer u/ S. 5 of the Industrial Employment (Standing Orders) Act. It was further held that in regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board the Industrial Employment (Standing Orders) Act shall continue to apply. A study of these two decisions of the Supreme Court makes it crystal clear that the maxim "*Generalia specialibus non derogant*" cannot be invoked in this case and there is no substance in the argument that the University of Health Sciences Act and the consequent rule in the prospectus made by the University shall be treated as a special rule. We have, therefore, no hesitation in rejecting the second submission made by the learned counsel for the reasons given above.

24. The third submission made by the learned counsel for the University of Health Sciences is that the autonomy of the University must be kept in tact. In support of this submission the learned counsel relied on the decisions reported in *M. Kiran Babu v. Government of Andhra Pradesh*, AIR 1986 AP 275; *Keshav Rao Jadhav v. State of A. P.*, 1990 (1) An WR 26 and *Hameedia Hardware Stores*, represented by its partner *S. Peer Mohammed Vs. B. Mohan Lal Sowcar*, . The principle of University autonomy laid down in *M. Kiran Babu v. Govt. of A.P.*, AIR 1986 AP 275 is with regard to the appointment of Vice-Chancellor and it was held that the Chancellor is not bound by the advice of Council of Ministers while making appointment of Vice-Chancellor while making such appointment. It was held that the equation of Chancellor with the Governor or the State Government, as the case may be, cannot be accepted in the light of the clear language, scheme and spirit of the statute of Sri Venkateswara University Act, 1954. The second decision reported in *Keshav Rao Jadhav v. State of A.P.*, 1990 (1) An WR 26 deals with the question of creation of a single-faculty University in the shape and form of the University of Health Sciences and the matter has been discussed with regard to Entry 66 in List I, Entry 32 in List II and Entry 25 in List III of the Constitution. It was also held, inter alia, that the University of Health Sciences shall abide by the standards determined by the U.G.C., and implement the coordination prescribed by the U.G.C. in the matter of higher education and research. In our opinion, the principle laid down in the above two decisions in support of the principle of University autonomy in the circumstances of these cases cannot be pressed into service in this batch of writ petitions. It is true that the University autonomy must be jealously guarded in matters of academic nature and the internal management of the Universities and its various faculties but to say that the University can formulate a rule of reservation which is in conflict with a similar rule made by the State Government and the State Government is the best authority to deal with such matters of reservation is not warranted by the principle of autonomy of the University. In fact, the rules of reservation are apt to be made by the State Government authorities after taking into consideration the several factors which may be having a bearing on the matter. It is also definitely in the interests of the educational institutions to have a uniform rule of reservation rather than to leave the matter to the individual whims and fancies of the Universities concerned for providing the rule of reservation. We are, therefore, not impressed with any of the three submissions made by the learned counsel for the University of Health Sciences.

25. Sri. B. Sudarshan Reddy, learned counsel appearing for the impleaded respondent No. 3 in W.P. No. 10943/90, has submitted that the 3rd respondent (who got himself impleaded) has secured the rank of 549 in the EAMCET. The last candidate who got the seat has secured the rank of 546. His submission is that in accordance with the accepted rules of interpretation of statute as given at page No. 109 in Maxwell's Interpretation of Statutes, 12th Edition, the provisions of Act No. 5 of 1983 and the rules framed thereunder in so far as the rule of reservation of 4% in favour of the children of Ex-servicemen and Defence

personnel is concerned, should be given a restricted interpretation and the rule framed by the Universities must be allowed to prevail. The relevant passage at page 109 in Maxwell's Interpretation of Statutes reads that sometimes to keep the Act within the limits of its scope and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons or in certain circumstances or for certain purposes only, even the language expresses no such circumscription of the field of operation. We are afraid we do not see much substance in such a submission made by the learned counsel in the present context of the situation existing in the present batch of writ petitions. To give a restricted interpretation to the operation of a statutory rule of reservation framed under Act 5 of 1983 just to give effect to a rule of prospectus issued by the Universities would amount to watering down the binding effect of the statutory rules. As stated earlier, the rule of 4% reservations as prescribed in R. 9(4) is a matter of statutory requirement which cannot be wished away by enforcing the rule of the prospectus of the various Universities providing reservation to the extent of 1%. More over, the question of restriction of operation as stated by Maxwell arises in the circumstances when the Act is to be kept within its limits and is not allowed to disturb the existing law beyond what the Act requires. Such a situation does not exist in this batch of writ petitions. The decision reported in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, lays down the principle that the Life Insurance Corporation of India Act is a general piece of legislation as compared to the Industrial Disputes Act which is construed as a special legislation for matters relating to settlement of industrial disputes including payment of bonus. We have already explained in detail that the above principle of general and special legislation is not applicable to the facts of the present cases because apart from the statutory rules holding the ground, there is no other statutory rule which provides for reservation in favour of the concerned class of persons.

26. Sri Y. Suryanarayana, learned counsel appearing for the Jawaharlal Nehru Technological University, has invited our attention to the relevant provisions of the Jawaharlal Nehru Technological University Act, 1972. U/S.28 of the said Act it is provided that the Engineering Colleges named therein shall be disaffiliated from the respective Universities and shall be formed into and maintained as constituent colleges of the Technological University and the Regional Engineering College, Warangal shall be an associate college of the Technological University. U/ S. 34 of the said Act reservation of seats for Backward Classes, Scheduled Castes and Scheduled Tribes will have to be made in accordance with such principles as may be made from time to time. It is significant to note that in so far as the reservation of seats for Backward Classes, Scheduled Castes and Scheduled Tribes are concerned, there is a clear provision in S.34 of the J.N.T.U. Act that the Universities have to fall in line with the principles determined by the Government from time to time. More over, there is no provision in this Act also dealing with the question of reservations to other categories. The rule of reservation for children of ex-servicemen and defence personnel given in the

prospectus issued by the Jawaharlal Nehru Technological University is R. 6 which provides reservation of 1% of seats in each course of study in favour of children of ex-servicemen and defence personnel including the children of Border Security Force and Central Reserve Police Force residing in Andhra Pradesh. Thereafter, the rules proceed to lay down certain norms for award of seats to the children of ex-servicemen and armed personnel who are in receipt of gallantry awards. We are convinced that the reasons given earlier in connection with the reservation rule in the prospectus issued by the University of Health Sciences apply with full force to the 1% reservation provided by the Jawaharlal Nehru Technological University also as the situation is *para materia* in both the Universities. Mr. Y. Suryanarayana, learned counsel appearing for the J.N.T. University has relied upon a decision of the Supreme Court reported in *M.K. Agarwal Vs. Gurgaon Gramin Bank and Others*, to substantiate his argument that in the absence of any guidelines for reservation of 4% of seats the rule with regard to such reservations is rendered unconstitutional and is liable to be struck down. The above submission of the learned counsel is devoid of any merit because in pursuance of the rule of reservation of 4%, the seats falling in the quota of 4% are to be awarded to the candidates in accordance with merit achieved by them in the EAMCET. It cannot, therefore, be contended that the rule of reservation of 4% is likely to go hay-wire if it is applied without any guidelines.

27. Mr. C. Trivikrama Rao, learned counsel appearing for the Governor and Principal of the Regional Engineering College, Warangal, respondent No. 3 in W.P. No. 10168/90, has contended that the intake of the students from the Government of India in the Regional College, Warangal, cannot be affected. It is evident that in accordance with the proviso to sub-s. (3) of S. 3 of Act 5 of 1983 admission of students into the Regional Engineering College, Warangal to the extent of one-half of the total number of seats shall be in accordance with the guidelines issued by the Government of India from time to time. Therefore, the rule of 4% reservation for the children of ex-servicemen and defence personnel will apply to seats which do not come within the intake of the Government of India.

28. Sri B. Adiharsayana, learned counsel appearing for the impleaded petitioners (respondents 4 to 6) in W.P. No. 10433/90, has submitted that under the Presidential Order there is no power to make reservation for defence personnel and therefore no quota can be fixed for them. We do not find much force in this submission. There is no bar under the Presidential Order for making reservation in favour of the children of ex-servicemen and defence personnel. The reservations envisaged under the Presidential Order is to restore the imbalance between the regions within the State of Andhra Pradesh and in no way they create a bar for making reservations in favour of other categories like the children of ex-servicemen and defence personnel.

29. Mr. Sivva Reddy, learned counsel appearing for the Agricultural University,

invited our attention to the provisions of the Andhra Pradesh Agricultural University Act. U/S. 3 of the said Act it is provided that a University shall be constituted under the name and style of the Andhra Pradesh Agricultural University and it shall be a body corporate having perpetual succession and a common seal. Under S. 5 of the said Act it is provided that the Government may reserve seats in colleges under the University for members of the socially and educationally backward classes, scheduled tribes and scheduled castes in accordance with such principles as may, from time to time, be determined by the Government in this behalf. Apart from the above, there is no specific provision dealing with the question of reservation in favour of other categories like children of ex-servicemen and defence personnel etc., in the Andhra Pradesh Agricultural University Act. Therefore, the same reasoning will apply to the case of the Agricultural University also and the rule of 4% reservation in favour of the children of ex-servicemen and defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh shall be made applicable to the candidates seeking admissions in A.P. Agricultural University.

30. The last submission made by all the learned counsel, which may be considered, is that a harmonious construction should be given to R. 9(3) and (4) of the Rules framed in G.O. Ms. No. 62 dated 10-2-1989. The submission so made is that under R. 9(3) reservation of seats for women are provided subject to permissibility in the rules and regulations of the respective Universities, 30% of the seats in each course in each institution shall be reserved in favour of women candidates from all categories, i.e., Open Competition, Scheduled Castes, Scheduled Tribes, Backward Classes-Groups "A", "B", "C" and "D" and Army Quota. A reading of R. 9(4) clearly reveals the fact that it is provided in positive terms therein that seats shall also be reserved in each institution in respect of the following categories to the extent indicated against each of them. However, if suitable candidates are not available in any category they shall be filled in with the candidates in Open Competition. The rule further reads that 4% of the seats are reserved for the children of ex-servicemen and, defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh. The submission made by all the counsel appearing for different Universities proceeds on the basis that in R.9(4) also it must be read that the rule is subject to permissibility in the rules and regulations of admission of the respective Universities. But, even a plain reading on R. 9(4) shows that no words to that effect have been employed in the said rule. On the other hand, it is provided in a definite form that seats shall also be reserved in respect of the categories which are mentioned therein. Therefore, we do not see any force in this contention that R. 9(4) also must be read as subject to permissibility in the rules and regulations of admission of the respective Universities.

31. Considering all the facts of the cases and in view of the fore-going discussion, the Writ Petitions are allowed with a direction that all the Universities shall implement R. 9(4) of the Rules issued in G.O. Ms. No. 62, Education

(Rules), dated 10th February, 1989 and provide reservations of 4% for the children of Ex-Service men and Defence Personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh. In the circumstances of the cases, there will be no order as to costs. Advocate's fee Rs. 250/- in each writ petition.

32. Petitions allowed.