
(1985) 03 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 660 of 1984

Meharabam Pheijao and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 26-03-1985

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 226, 29(2)
Manipur M.B.B.S. Course (Selection of Candidates) Rules, 1984 — Rule 16, 18(2)

Citation : AIR 1986 Guw 28

Hon'ble Judges : T.C. Das, J; S. Haque, J

Bench : Division Bench

Advocate : S.N. Medhi and P. Pathak, for the Appellant; Th. Munindra Kumar Singh, Government Advocate and N.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—The three petitioners herein have questioned the legality and validity of the nomination of 5 candidates for admission into the 1st Year M. B. B. S. Course for the 1984-85 session in the medical college of Ranchi, Silchar and Gorakhpur. The intrinsic facts are that the Secretary, Medical, to the Government of Manipur published a notification dated 8-7-83 prescribing the minimum eligibility marks for general, Scheduled Caste & Scheduled Tribe candidates for admission to the Regional Medical College at Imphal and the other medical colleges outside the State, namely, B. R. D. Medical College, Gorakhpur, Regional Medical College Silchar and Rajendra Medical College at Ranchi. Altogether 15 seats were reserved for the candidates from Manipur from Central Pool. About 400 candidates including the three petitioners appeared in the test examination held by the Selection Board on 22-7-84 for getting admission into the 1st year M. B. B. S. Course for the year 1984-85. On the basis of the said examination, the Selection Board published a select list on 23-7-84 of the selected candidates under the signatures of the Chairman and three Members of the Board. 38 candidates were selected against general quota, 20 candidates were selected against Scheduled Tribes quota and 3 candidates were selected against

Scheduled Castes quota. The name of the petitioner No. 1, however, appeared against Srl. No. 2 amongst the Scheduled Caste candidates and the names of petitioners Nos. 2 & 3 appeared against Sri. Nos. 28 & 29 amongst the general candidates. The State Government of Manipur thereafter published the final select list nominating 2-7 general candidates, 12 Scheduled Tribes and 1 Scheduled Caste candidates for admission to different medical colleges as shown against their names. However, all the three petitioners were not nominated. Total number of candidates shown nominated by the government came to 40. Out of the 40 candidates so nominated, 30 were for the Regional Medical College at Imphal and 10 were for other colleges outside the State of Manipur from the Central Pool. It is stated by the petitioners that the Desk Officer of the Ministry of Health & Family Welfare, Govt. of India, New Delhi by his letter dated 22-6-84 informed the Secretary to the Govt. of Manipur, Medical Department that 15 seats from the Central Pool had been allocated to the State of Manipur for the year 1984-85 as per list annexed to this petition. It is stated by the petitioners that the State of Manipur disclosed only 10 seats at the time of nomination of the candidates out of the select list prepared by the Selection Board. On 14-8-84 the Government of Manipur issued 5 orders allocating seats to respondents Nos. 3, 4, 5 & 6 and another in the B. R. D. Medical College at Gorakhpur, Regional Medical College, Silchar and Rajendra Medical College, Ranchi. These 5 orders are the main target of attack by the petitioners in this writ application. It is stated by the petitioners that they came to know about the allocations of the seats to the Respondents Nos. 3 to 6 and another in the month of Oct. 1984. But as the High Court was closed on account of long vacation during that period, the petitioners moved an application under Article 32 of the Constitution of India before the Hon'ble Supreme Court on 18-10-84. It is submitted by Mr. Medhi, the learned counsel for the petitioners that when the application was moved on 7-11-84 before the Hon'ble Supreme Court, the Gauhati High Court then reopened. Their Lordships of the Supreme Court, as stated by Mr. Medhi, by order dated 7-11-84 directed the petitioners to move this Court by filing a writ application under Article 226 of the Constitution of India challenging the orders dated 14-8-84 passed by the Government and the corrigendum dated 21-7-84 purporting to amend Rule 18(2) of the Admission Rules. Mr. Medhi, the learned counsel for the petitioners could not show any order of their Lordships of the Supreme Court though he has verbally submitted the above facts. However, we do not disbelieve the statements made by Mr. Medhi, learned counsel for the petitioners in this regard.

2. For the purpose of allocation and nomination of candidates for admission into M. B. B. S. course, the Government of Manipur in the Health Department has framed a set of Rules known as "The Manipur M. B. B. S. Course (Selection of Candidates) Rules, 1984". The said set of Rules were published under notification dated 2-7-84 in the Manipur Gazette Extraordinary dated 11-7-84. Thereafter, the Government of Manipur felt it necessary to amend the Rules 16(2) & 18(2) of the said Rules and with that end in view, a corrigendum was published on

21-7-84. By the said corrigendum, Rule 18(2) was amended to the following effect: --

"2. Rule 18(2) :

The words "whose names appear in the Select List" appearing in the 5th and the 6th lines between the words "circumstances", and "not" be deleted".

The expression "Whose names appear in the Select List" was deleted.

3. It is submitted by the petitioners that names of none of the respondents, namely, Respondents Nos. 3 to 6 appeared in the Select List as prepared by the Selection Board. It is further submitted that there is no record to show that they appeared in the selection test held on 22-7-84. Therefore, the main grievance of the petitioners B that the Respondents Nos. 3 to 6 and another would not have been nominated by the Government for getting admission to the Medical Colleges outside the State of Manipur under Rule 18(2) of the Rules.

4. In this writ application the petitioners have challenged the allocation of seats by the Government of Manipur in favour of Respondents Nos. 3 to 6 and another on the ground of gross violation of the provisions of Rule 18(2) of the Rules. The corrigendum published by the Secretary to the Government of Manipur on 21-7-84 has been challenged in this petition as illegal, void and ultra vires, being violative of Articles 14, 15(4) and 29(2) of the Constitution.

Before embarking on any further discussions, let us consider few relevant provisions of the Rules, namely, the Manipur M. B. B. S. Course (Selection of Candidates) Rules, 1984 (in short "the Rules"). Rule 5 in Chapter II of the Rules prescribes the method of nomination which is quoted herein below :

"5. Nomination of candidates to the available seats shall be by selection in accordance with the provisions of these rules."

Rule 6 lays down the provision for competitive test which is quoted below :

"6. For selection of candidates for nomination, the Selection Board shall hold and conduct a competitive test (hereinafter referred to as the Competitive Test) on such date and place as it may, in consultation with the Government, specify."

Rule 9 of the Rules says about disqualification for nomination as under :--

"9. No person shall be qualified for nomination under these rules unless --

(i) he has appeared in the Competitive Test.

(ii) he is found by the Medical Examination Board to be in good mental or bodily health and free from any mental or physical defect likely to interfere with medical studies and profession.

(iii) he is a domicile of Manipur by birth or either of his parents has been continuously residing in Manipur for a period of not less than 20 years or has

been in the service of the Government, Manipur University or Regional Medical College, Imphal, and

(iv) he has not been found, by any competent court, guilty of misconduct or convicted of an offence involving moral turpitude."

However, the relevant Rules for our purpose would be Rules 16, 17 and 18. We quote below the Rules 16, 17 and 18.

"16. (1) The Selection Board shall forward to the Government a list, (hereinafter referred to as "Select List") arranged in the order of merit, of the general candidates and of the candidates belonging to the Scheduled Castes and Scheduled Tribes, who are found by the Selection Board to be suitable for nomination with due regard to the maintenance of standard and efficiency of medical studies and profession. The list shall also be published for general information,

(2) For the purpose of Sub-rule (1), 80% of the marks obtained in the Competitive Test shall be aggregated with 20% of the marks obtained in English, Physics, Chemistry and Biology in the qualifying Examination.

17. Subject to the provision of rules 9 and 18, candidates will be considered by the Government for nomination to the available seats in the order of merit in which their names appear in the Select List

18. (1) The Government may, by order, reserve seats for Scheduled Castes and Scheduled Tribes as per rules for the time being, in force. ,

(2) The Government may, after taking into consideration the backwardness of any area or community or of other special circumstances, nominate in any Medical College outside Manipur, such number of candidates belonging to such area, community or, as the case may be, relating to the special circumstances, whose names appear in the Select List, not exceeding 10% of the available seats."

The changes brought by corrigendum dated 21st July, 1984 with regard to Rule 16(2) and Rule 18(2) of the Rules are quoted herein below : --

"Rule 16(2)

For the purposes of Sub-rule (1), 80% of the percentage of marks obtained in the Competitive Test shall be aggregated with 20% of the percentages of marks obtained in English, Physics, Chemistry and Biology in P. U. Science or equivalent Examination.

18(2) The Government may, after taking into consideration the backwardness of any area or community or of other special circumstances, nominate in any Medical College outside Manipur, such number of candidates belonging to such area, community or, as the case may be, relating to the special circumstances, not exceeding 10% of the available seats."

Rule 18(2) with the corrigendum of amendment appears to be the key Rule for nomination of the students by the Government in the medical colleges outside the State of Manipur.

5. Mr. Th Munindra Kumar Singh, the learned Government Advocate, Manipur has raised a preliminary objection that the authority of the medical colleges have not been made parties in this writ application. In reply, Mr. Medhi, the learned counsel for the petitioners has submitted that the Principal, Gorakhpur Medical College is made a party respondent in this writ petition. But it is not necessary to make all the authorities concerned of the medical colleges to be the parties in the petition because if any order is rendered by this Court that will be binding on them. However, we need not put much importance to the question of non-joinder of necessary parties in this writ application because we can dispose of this application without touching his issue also. Moreover, Mr. Medhi, the learned counsel for the petitioners has stated that the Principal, Gorakhpur Medical College has been impleaded as respondent No. 7 in this writ petition. The Union of India is not at all a necessary party to be impleaded in this writ petition and, therefore, the objection as raised by the learned Government Advocate, Manipur is not tenable only because 15 candidates are from the Central Pool. We need not detain ourselves any further in this issue. Let us now examine the contentions of the learned counsel of the parties on other issues.

6. Mr. Medhi, learned counsel for the petitioners has advanced his argument on the basis of the nominations made by the Government of Manipur in favour of Respondents Nos. 3 to 6 and another who is not impleaded in this writ application. The grievance of the petitioners, as submitted by the learned counsel for the petitioners, is that the names of Respondents Nos. 3 to 6 were not included in the Select List. Therefore, they must have been nominated under the provisions of Rule 18(2) of the Rules. Mr. Medhi has drawn our attention to the 4 orders annexed to this petition issued by the Government of Manipur nominating respondents Nos. 3 to 6 and has stated that the orders do not contain compliance of any required qualifications as laid down under Rule 18(2) of the Rules and that the Government ever took into consideration as to the backwardness of any area or community or existence of any other special circumstances to nominate the names of respondents Nos. 3 to 6 for admission into the medical colleges outside Manipur. The next attack of Mr. Medhi is that the Government while nominating the names of respondents Nos. 3 to 6 did not take into consideration any circumstances as required to be considered under Rule 18(2) of the Rules though in the affidavit it has been stated by the Government about so called consideration of "special circumstances" to nominate the names of Respondents Nos. 3 to 6. The next submission of Mr. Medhi is that the allocation of seats to Respondents Nos. 3 to 6 who were not at all selected by the Selection Board, is violative of Articles 14, 15(4) and 29(2) of the Constitution of India and the orders impugned herein being ultra vires, illegal and void are liable to be set aside. In the written argument, the learned counsel for the petitioners has made the following submissions : --

(a) That the petitioners having been duly selected as per Select List (Annexure II) and none of the respondents Nos. 3 to 6 having been selected by the Selection Board, discrimination is writ large inasmuch as the orders of allocation of seats in favour of them are violative of Articles 14 and 15(4) of the Constitution.

(b) That the Desk Officer of the Govt. of India, Ministry of Health & Family Welfare by the letter dated 22-6-84 having informed the Government of Manipur about allocation of 15 seats from Central Pool for the State of Manipur in different medical colleges outside the State, the Government of Manipur acted illegally and mala fide in disclosing only 10 seats out of 15 seats from the Central Pool in the final select list with a view to deprive the eligible candidates already selected by the Selection Board. The impugned corrigendum issued by the Secretary to the Govt. of Manipur in respect of amendment of the provision of Rule 18(2) by deleting the expression "whose names appear in the Select List" gives an unrestricted power to the Government to pick and choose the candidates for nomination even from quota of the Central Pool according to their choice which is not only illegal but unconstitutional and violative of Article 15(4) of the Constitution.

(c) That the corrigendum dated 21-7-84 being without any guidelines and there being no nexus with the object sought to be achieved in selecting and nominating the best suitable students for getting themselves admitted into the medical science, is liable to be struck down as illegal and unconstitutional.

(d) That the respondents Nos. 3 to 6 were not at all eligible for allocation of seats under Rule 18(2) of the Rules. The expression "other special circumstances" appearing in Rule 18(2) being extremely vague and unintelligible, such expression not having any basis or guidelines for the purpose of allocation of seats in the medical colleges the provisions of Rule 18(2) after issuance of corrigendum by deleting a provision without giving the guidelines are not only illegal but are equally in contravention of the basic principles underlined within the meaning of Article 15(4) of the Constitution. (By) the deletion of the guidelines appearing in Rule 18(2) by the impugned corrigendum, the government has assumed an uncontrolled and arbitrary power to apply the provision of Rule 18(2) even in a case where a candidate has failed to fulfill the conditions as enumerated in the said Rule and nomination of such candidates who have not even qualified themselves in the test examination would not only deprive the eligible candidate of their rights but also will create a sense of discrimination offending Articles 14 and 15(4) of the Constitution of India.

(e) That the issuance of corrigendum for the purpose of amendment of old existing Rule 18(2) has given a wide power to the Government to nominate any one of the candidates even from outside the Select List who are otherwise not eligible for such nomination.

(f) That there are already 2 female candidates selected in the general list against

Srl. Nos. 37 & 38 (Annexure II) as the intention of the Government was to accommodate women also to be nominated against reserved seats. On the face of it there cannot be any ground to select other female candidates only because the women of Manipur are stated to be very backward in the society.

These are the main grounds of attack as taken by the learned counsel for the petitioners.

7. Before we take up the submissions of the learned Government Advocate in reply to the contentions of Mr. Medhi, let us consider one important aspect of the matter even at this stage. The Government of Manipur by virtue of the authority under Rule 18(2) as amended by corrigendum nominated altogether 5 candidates to be admitted in three different colleges outside the State of Manipur. They got themselves admitted into the different Medical Colleges in the month of Nov. 1984 on the strength of the nomination by the Government. The petitioners have no grievance against respondent No. 3 as he has been dropped by the petitioners from being a party respondent in this writ application. Another candidate whose nomination has not been challenged by the petitioners is admittedly not a party in this writ application. Both the candidates were nominated by the Government of Manipur under Rule 18(2) of the Rules as amended on the ground that there existed special circumstances for such nominations. When the petitioners have no grievance against these two candidates who were nominated under Rule 18(2) of the Rules, can they challenge the Rule in case of only 3 respondents, namely Respondents Nos. 4, 5 and 6 leaving the two other candidates who are on the same footing as of Respondents Nos. 4, 5 and 6 ? We shall deal in this matter after considering the reply of learned Government Advocate, Manipur in this regard.

8. We now record the summary of submissions of the learned Government Advocate, Manipur.

It is submitted by the learned Government Advocate, Manipur that two modes are prescribed for nomination of candidates as per Rule 1984 of Manipur M. B. B. S. Course (Selection of Candidates) Rules, (hereinafter the Rules). One is general as described in Rule 16(1) read with Rule 17 and the other is as prescribed in Rule 16(2) of the Rules. The Select List is prepared on the basis of merit for the purpose of nomination from general candidates, Scheduled Tribes and Scheduled Castes. Rule 18(2) is absolutely independent of the Select List. The purpose and object of Rule 18(2) is to make a separate category for the purpose of nomination independent of those as prescribed under Rule 16(1) read with Rule 17. Rule 18(2) excludes the categories as prescribed in Rule 15(1) and Rule 17 and prescribes those candidates for consideration by the Government under three circumstances, namely, (1) Backwardness of any area. Area (geographical area) considering the backwardness of the women, orphan and other factors, (2) Community basis and (3) on Special circumstances -- The candidates who are to be considered for nomination by the Government under certain special circumstances, the Government after due consideration under Rule 18(2) of the

Rules may nominate them as candidates for any prescribed medical colleges outside the State. The provisions as prescribed under Rule 18(2) for the purpose of nomination of the candidates is to achieve the object as prescribed under Article 15(4) read with Article 29 of the Constitution. The real intent of Rule 18(2) is to achieve the object with strict compliance to the provisions as prescribed under Article 15(4) read with Article 29 of the Constitution of India. In order to achieve that object, the Government may constitute and/or frame its own rule. Rule 18(2) is strictly in conformity with the provision of Article 15(4) of the Constitution. That being the object, it was felt necessary to issue the corrigendum to make it a completely separate provision by deleting the provisions for selecting the candidates from the select list. The basic difference of Rule 16 and Rule 18 broadly, as submitted by the learned Government Advocate, is that Rule 16 mentions about select list in order of merit that is to say that a candidate must appear in test examination and in order of merit, their names will appear in the select list for the purpose of recommendation of their names by the Selection Board for getting admission into the Medical College. Rule 16(1) speaks that a candidate must be qualified with the minimum marks as prescribed in Rule 16(2). Rule 18(2) being independent of Rule 16, no such test is required for selecting the candidate because the word "Nomination" is appearing in Rule 18(2) and that power rests with the Government to nominate. But in Rule 18(2) also the candidates must obtain qualifying marks. To nominate a candidate under Rule 18(2), is the discretionary power of the Govt. and it rests with the Government to nominate any eligible candidate. The learned Government Advocate submits that Rule 18(2) does not require holding of any test examination. It is only required in case of recommendation for preparing the select list. The five candidates whose names have been nominated by the Government, in fact, appeared in the test examination and they became qualified for such nomination. Though the five candidates as nominated by the Government, appeared in the test and became qualified, their names were not recommended by the Selection Board. The present Rule was published on 11-7-84 and it became effective on such publication. The learned Government Advocate has also referred to us the earlier Rule of 1978, more particularly the Rule 14 which runs as follows : --

"Rule 14 -- Reservation of seats :

Seats for Scheduled castes/Scheduled Tribes candidates and for girls will be reserved by the Government as per rule in force by a separate order issued exclusively for this purpose."

In this context the learned Govt. Advocate has submitted that keeping in view the earlier Rule 14 of 1978 Rules, the State Government has framed the present Rules in 1984. However, it was felt that Rule 18(2) required amendment to keep conformity with the earlier Rule 14, by deleting the clause "whose names appear in the select list". Therefore, as submitted by the learned Government Advocate, it was necessary to issue the corrigendum to make it more meaningful and to

have the real object, intent and purpose as intended under Article 15(4) of the Constitution. Rule 16(2) was also found to be vague as regards "qualifying examination" and therefore, the Government by the said corrigendum issued on 19-7-84 published on 21-7-84 brought an amendment to Rule 16(2) of the Rules.

After the issuance of corrigendum, the merit test was held on 22-7-84. On 23-7-84 the select list was prepared by the Selection Board and forwarded the list to the Government. Thereafter, final list for nomination was made by the Government on 10-8-84. By this nomination, which may be termed as a final list, the Government nominated 40 candidates on 10-8-84 to get themselves admitted into different medical colleges. Therefore, as submitted by the learned Government Advocate, corrigendum was issued earlier in point of time before holding of examination for preparation of the select list and of final list by the Selection Board for nomination by the Government. On 14-8-84 the names of 5 candidates were nominated by the Government under Rule 18(2). The learned Government Advocate has submitted that the Government was not bound to nominate the candidates from the select list and the nomination of 5 candidates is within the limit of 10% of the available seats making 45 in total. Therefore, there is no question of concealment of seats on the part of the Government. There were altogether 30 seats in the Regional Medical College and 15 seats were of different States from Central pool. As per Rule 17, it is a condition precedent to keep 5 seats reserved under Rule 18(2) as because before nominating the names from the final select list, the Government must comply with the provisions of Rule 18(1) and Rule 18(2).

9. In the context of the rival contentions of the learned counsel of both the parties, let us now examine as to whether the amended provisions of Rule 18(2) after deleting the sentence "whose names appear in the select list" offend the constitutional provisions and vesting an arbitrary power to the Government to nominate the candidates at its own choice by adopting the pick and choose method. Mr. Medhi, learned counsel for the petitioners has submitted that he has only one grievance that the issuance of corrigendum and the amendment of the Rule 18(2) is absolutely violative Articles 14, 15(4) and 29 of the Constitution and it vested an arbitrary power to the Government by eliminating the most suitable candidates whose names appear in the select list on selection by the Board after considering their examination marks in the science subjects. Rule 18(2) speaks about "backwardness" which usually be interpreted as qualifying the expression to those who are educationally and socially backward. The Scheduled Castes and Tribes being mentioned together with the backward classes in Article 15(4), it is evident that by the expression "backward classes" the clause refers to classes of persons other than the members of the Scheduled Castes and Tribes. At the same time, it is also clear that such classes may be classified as backward as are in the matter of backwardness comparable to the Scheduled Castes and Tribes. It is true that the concept of backwardness is not relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. Article 15(4) would not

justify any further classification within the backward classes, as "backward" and "more backward classes". In *State of Kerala Vs. Kumari T.P. Roshana and Another*, their Lordships of the Supreme Court had held that when a part of a State is socially and educationally backward, with reference to any other part, the inhabitants of that part may be considered as a backward classes, en bloc, so that it would be permissible for the State to offer reservation or weightage to that backward area in the matter of admission to an educational institution which is common to both parts.

10. However, in this case as submitted by Mr. Medhi, the matter in dispute is within a narrow compass relating to the amendment of Rule 18(2) by the impugned corrigendum. Though the corrigendum has been challenged, peculiarly enough, the amendment brought by issuing the corrigendum with respect to Rule 16 has not been challenged and Mr. Medhi has not also raised any dispute in respect of amendment of Rule 16. Therefore, is it possible to declare the corrigendum as void and illegal relating to a part of it. Possibly, we will have to think it over twice. It is submitted by Mr. Medhi, learned counsel for the petitioners that the amended provision of Rule 18(2) is opposed to Articles 14, 15 and 29 of the Constitution being unreasonable and without any nexus between the basis of the classification and the object sought to be achieved and that it gives power to the Government to nominate candidates even from outside the select list on the ground of "backwardness" and on "special circumstances". According to Mr. Medhi, this amounts to total denial of equal protection of law. It is further stated that there is no conceivable basis for such a nomination as provided under Rule 18(2) of the Rules. The said Rule is not statutory but only an administrative direction and/or guideline to select the candidates for admission into the different medical colleges in the State and outside the State. It is argued that Rule 18(2) is arbitrary provision and is opposed to the idea of fair play by the State as it is based on the pick and choose method in the colour of so-called backwardness of the area and on the existence of any "special circumstances" for such nomination.

11. The main contention of the learned Government Advocate on the other hand is that the petitioners have no right to challenge the Rule and the corrigendum as nobody is discriminated on the ground of their having been selected by the Selection Board for admission into different medical colleges. The petitioners have no locus standi as because they were not finally selected as their names were much below in the select list compared to those who were finally selected for admission by the Government. As regards the remaining candidates from the Central pool, the Government had the power to nominate the names of the students outside the Select List after the amendment was made prior to the preparation of the Select List. Therefore, there cannot be any discrimination nor the provision of Article 15(4) is violated. The object of the State is to provide medical personnel for the entire State. The State for achieving the aforesaid object has framed this Rule so that the eligible Candidates may be admitted in the medical colleges of different States. The State has considered the

comparative backwardness from the stand point of medical education, specially, amongst women of Manipur. There is nothing unreasonable or discriminatory when persons belonging to different regions of the same State are placed in some classification with a view to obtain the avowed object of the Rule and giving facilities and encouragement to the women students. Therefore, the Rule cannot be said to be violative of Articles 14 and 15(4) of the Constitution. When An. 15(4) contemplates that the State can make the special provision, it is clear that the said provision can be made by an executive order and the Rules. The Rule as at present stands, can give no room for any complaint. The reservation of the power for nominating the candidates in particular, for medical studies, the provision does not offend any of the constitutional inhibitions. It subserves the purpose and policy to further national integration by providing the exchange of students from one State to another and in doing so there cannot be any doubt that such policy has been made to keep the uniformity of the students of different medical colleges of different States. They are made with a view to exchange students and such Rule and classification based on lawful policy cannot be said to be violative of the provisions of the Constitution. In matters of education as in many other matters, it will be fatal for any State in the Union to think in narrow terms merely because other States have not given reciprocity. This is the underlined idea why the seats are reserved from Central pool to nominate students for admission in different medical colleges outside the State. To make provisions for reservation for socially and educationally backward classes, the State Government, however, shall keep in mind that the candidates whose names are nominated are really from educationally backward classes or they are by convention treated as candidates coming from educationally backward classes.

12. The meaning of the word "class" occurring in Articles 15(4), 16(4) and 29(2) vis-avis caste, and the criteria necessary for determining that class to escape the prohibition in Article 15(1) have been set out in *M.R. Balaji and Others Vs. State of Mysore*, which is now the locus classicus on the subject. Their Lordships of the Supreme Court held :

"In determining the question as to whether a particular provision has been validly made under Article 15(4) or not, the first question which falls to be determined is whether the State has validly determined who should be included in these Backward Classes. It seems fairly clear that the backward classes of citizens for whom special provision is authorised to be made are, by Article 15(4) itself, treated as being similar to the Scheduled Castes and the Scheduled Tribes."

13. It is not necessary for us to examine in detail about the Rules as there is no challenge by the learned counsel for the petitioners except the provisions of Rule 18(2) as amended.

14. Now let us examine the position in the context of the rival contentions of the learned counsel of the parties.

Mr. Medhi, the learned counsel for the petitioners has submitted that the object of allocation of seats in the Medical Colleges as enunciated by the Hon"ble Supreme Court in a number of decisions that the best available students should be inducted for study of medical science, and Rule 18(2), as it stands after the amendment not having any nexus with the object sought to be achieved, cannot be legally sustained and is liable to be declared illegal, unconstitutional and void. The next submission of Mr. Medhi is that Rule 18(2) as it stands after amendment, if allowed to hold the field, will cause floodgate of discrimination offending Articles 14 and 15(4) of the Constitution of India. The further submission of Mr. Medhi is that two females are already selected in the general list against serial Nos. 37 and 38. If the intention of the Government was to accommodate women, then the two selected female candidates could have been nominated against reserve seats. Relying on the decision of State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, Mr. Medhi has contended that reservation of seats for medical colleges for socially backward classes in rural areas is unconstitutional. In Pradip Tandon's case, their Lordships of the Supreme Court while dealing with the provisions of reservation of seats in the medical colleges with the context of Article 15(4) of the Constitution of India had held:

"The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation is made for the majority population of the State. 80 per cent of the population in the State of U. P. in rural areas cannot be a homogeneous class by itself. They are not of the same kind. Their occupation is different. Their standards are different. Population cannot be a class by itself. Rural element does not make it a class. The special need for medical men in rural areas will not make the people in the rural areas socially and educationally backward classes of citizens. Poverty in rural areas cannot also be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India."

In the context of reservation of seats for the candidates of the rural areas, Mr. Medhi, the learned counsel for the petitioners has referred to us another decision of their Lordships of the Supreme Court as reported in Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others, In that case their Lordships of the Supreme Court held that the reservation on the ground that candidates hailed from rural areas was unconstitutional. What happened in Arti Sapru (supra) was that in absence of intelligible data, more than 95% of the villages were classified as socially and educationally backward calling for reserve quota for admission into the medical colleges. In that context their Lordships held :

".....the classification attempted by the State Government by its order dated 24th September, 1980 suffers from the vice of arbitrariness and must be declared invalid. There is no intelligible data before us for sustaining the classification....."

It was further held by their Lordships --

".....No doubt the State Government has acted in the own wisdom, but the material to which that wisdom was applied has not been disclosed at all. The fact by itself that some hundreds of villages have been brought within the classification is of no assistance whatsoever."

Considering the earlier decision of the Supreme Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, their Lordships held --

"The criterion adopted by the State Government cannot be accepted unless supported by other relevant considerations. That a comprehensive understanding of regional imbalances from the Anand Committee report and the Sikri Commission report has not been possible yet affords no justification for an arbitrary classification. We are not satisfied that the State Government has succeeded in bringing the case within Article 15(4) of the Constitution. The material before us was fully inadequate and fails to sufficiently support the validity of the classification. We are of opinion that the order of the State Government dated 24th September, 1980 must be declared invalid."

The next case as relied on by Mr. Medhi, the learned counsel for the petitioners, is the case of *Surendra Kumar Vs. State of Bihar and Others*, It was a case where a list of candidates was prepared and recommended by Chief Minister of one State to the Government of another State for admission to medical colleges of that State against seats reserved for the former State. The basis of such selection of the candidates by the Chief Minister for preparing such list was not disclosed. Their Lordships observed, that as there was no basis for such selection, the selection was held to be arbitrary and in blatant misuse of power and therefore, it was violative of Article 14 of the Constitution and it was quashed. Their Lordships further observed that it is incumbent for the State Government to adopt a criterion or restrict its power by reference to norms which, while designed to achieve its object, nevertheless confine the flow of that power within constitutional limits. The above observation was quoted by their Lordships from the decision in *Suman Gupta and Others Vs. State of Jammu & Kashmir and Others*, In *Suman Gupta (supra)*, their Lordships held -

"Now, the selection of an appropriate procedure lies ordinarily within the domain of administrative policy, and when the objective can be fulfilled by more than one constitutionally valid method, the selection must be left to administrative choice. The Courts are generally concerned merely with the legal validity of the choice made. We think it desirable, therefore, to leave it to the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in Medical Colleges outside the State. The problem is one which needs to be tackled at the national level, having regard to the objective which is sought to be achieved and to the circumstances that it calls for reciprocal arrangements between Medical Colleges throughout the country until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nominations be made by following the procedure of selecting candidates strictly on the basis of merit,

the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the Medical Colleges of the home State.

Considerable and vehement argument has been addressed on behalf of the petitioners and the appellants that we should make an order revoking the nominations already made by the Jammu and Kashmir Government and the Andhra Pradesh Government. We do not propose to do so. The State Government proceeded in the bona fide belief that the procedure adopted by it was just and proper, the basis being one which appears to have been uniformly adopted by all the participating States, Besides, the candidates nominated have already covered a substantial part of their course of studies. These considerations considered cumulatively dissuade us from interfering with the nominations already made."

It was further observed that in matters of choosing candidates for nomination to seats reserved in Medical Colleges of other States, there is no absolute power vested in the State Govts. It is incumbent on the State Government to adopt a criterion or restrict its power by reference to norms which, while designed to achieve its object nevertheless confine the flow of that power within constitutional limits. It cannot be said that an adequate system of standards cannot be devised for that purpose. Tested on the touchstone of constitutional values, the claim of the State Government to the content of the power assumed by it must be declared invalid.

The other decisions on which Mr. Medhi has relied, are (a) Suneel Jatley and Others Vs. State of Haryana and Others, and (b) Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, In Suneel Jatley (supra) their Lordships held. --

"It is well settled that Article 14 forbids class legislation but permits reasonable classification in the matter of legislation. In order to sustain the classification permissible under Article 14, it has to satisfy the twin tests : (1) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) the differentia must have a rational relation to the object sought to be achieved by the impugned provision.....

What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from 1st to 8th standard are at a comparative disadvantage to those taking education in urban schools in the same standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education, equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instruction from 1st to 8th Standard. However, as pointed out earlier, the knowledge acquired by the students while taking instruction in Classes I to VIII has hardly any relevance to his being equipped for taking the test for entrance to the medical college. The real challenge could come in Standards XI and XII. In this behalf all students those coming from common

rural schools and urban schools are similarly placed and similarly situated arid yet by a reference to a past event wholly unrelated to the objects sought to be achieved, they are artificially divided."

Their Lordships have further held --

"We are therefore satisfied that the classification is not founded on intelligible differentia and at any rate it has no rational nexus to the object sought to be achieved. The classification is irrational and arbitrary. The reservation based on such classification is constitutionally invalid."

Mr. Medhi has lastly submitted that the nomination of 5 candidates by the State Government has no basis as to how their names could be considered for nomination under any special circumstances. The impugned orders of nomination of those 5 candidates do not speak existence of any such special circumstance nor it can be gathered that in nominating their names, the Government took into consideration as regards existence of any "special circumstances". Therefore, according to Mr. Medhi, the case of those 5 candidates cannot come within the purview and meaning of Rule 18(2) of the Rules under which the Government wants to take shelter. However, in counter affidavit the State Government has stated that the nominations of 5 candidates under Rule 18(2) of the Rules were made under "special circumstances" considering the fact that there are dearth of women doctors in the entire State of Manipur. Mr. Medhi has submitted that the nominations of 5 candidates are liable to be quashed being arbitrary and made without following any guideline.

15. Mr. Th. Munindra Kumar Singh, learned Government Advocate, Manipur has submitted that the Government has a right to decide from what sources the nomination should be made and that is essentially a question of policy matter depends, inter alia, on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis, the manner and methods of making such classification for selection or nomination, the Court shall not interfere with the action of the State.

16. It is true that the main purpose of admission to a medical college is to impart education in the theory and practice of medicines. The source from which the students have to be drawn are determined by the authorities who maintain and run the institution. As observed by their Lordships in *Minor P. Rajendran Vs. State of Madras and Others*, that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper Rules in the matter of selection, but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner as has been done in the present case it is difficult to see how the classification has rational nexus with the object of imparting medical education and also for selection for the purpose. However, 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. The Manipur M.B.B.S. Course (Selection of Candidates) Rules, 1984 prescribe 2 classifications -- one, selection by the Selection Board for the purpose of final selection to be made by the Government and the Other being nomination by the Government as prescribed under Rule 18(2) of the Rules. Therefore, as submitted by the learned Government Advocate that the Rule prescribes certain norms and guidelines how to nominate the candidates and how to select the candidates for the purpose of admission in the medical college in the State as well as outside the State including the candidates from Central pool. Reliance is sought to be placed on the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, In that case their Lordships have held --

"It cannot be disputed that the State must do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and the State is entitled to make reservations for them in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made....."

In Dr. Jagadish Saran and Others Vs. Union of India (UOI), their Lordships held --

"Coming to brasstacks, deviation from equal marks will meet with approval only if the essential conditions set out above are fulfilled. The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage....."

However, it appears that for the purpose of selection and nomination for admission to the medical colleges, considering the background of the State Policy it was essential to frame Rules and it appears that the Rule has been framed to select the best women candidates including the women of Manipur from amongst the candidates in order not only to provide them with adequate means of livelihood but also to provide the much needed medical aid to the people and to improve the public health generally and mostly the interior villages and in the most backward areas of the State. The learned Govt. Advocate has further submitted that the 5 nominated students have got themselves admitted in different medical colleges and they are prosecuting their studies for a period of about 5 months. Referring to Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, specifically to paragraph 9 of the judgment, the learned Government Advocate has submitted that as they have already covered a substantial part of their course and in view of the fact that the petitioners have not raised any grievance against two of the nominated candidates, it would be

against the principle of natural justice if any order adverse to them is passed behind their back as because the order would cover their case also. It is further contended by the learned Government Advocate that it is admitted by the petitioners that they have left out respondent No. 3 in this writ petition. They have also no grievance against one of the nominated candidates who has not been made party in this writ petition. Therefore, on that score alone the petitioners are not entitled to any relief apart from other considerations as regards Rule 18(2) of the Rules. The above contention of the learned Government Advocate has sufficient force.

17. The learned Government Advocate has next referred to us the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, The learned counsel has drawn our attention to paragraph 18. At paragraph 18 of the judgment their Lordships observed --

"The second consideration which has legitimately weighed with the courts in diluting the principle of selection board on merits is the claim of backwardness made on behalf of any particular region. There has been cases where students residing in a backward region have been given preferential treatment in admissions to medical colleges and such preferential treatment has been upheld on the ground that though apparently discriminatory against others, it is intended to correct the imbalance or handicap from which the students from the backward region are suffering and thus bring about real equality in the larger sense. Such preferential treatment for those residing in the backward region is designed to produce equal opportunity on a broader basis by providing to neglected geographical or human areas an opportunity to rise which they would not have if no preferential treatment is given to them and they are treated on the same basis as others for admissions to medical colleges, because then they would never be able to compete with others more advantageously placed. If creatively and imaginatively applied, preferential treatment based on residence in a backward region can play a significant role in reducing uneven levels of development and such preferential treatment would presumably satisfy the test of Article 14, because it would be calculated to redress the existing imbalance between different regions in the State. There may be a case where a region is educationally backward or woefully deficient in medical services and in such a case there would be serious educational and health service disparity for that backward region which must be redressed by an equality and service-minded welfare State. The purpose of such a policy would be to remove the existing inequality and to promote welfare based equality for the residence of the backward region. If the State in such a case seeks to remove the absence of opportunity for medical education and to provide competent and adequate medical services in such backward region by starting a medical college in the heart of such backward region and reserved a high percentage of seats there to students from that region, it may not be possible to castigate such reservation or preferential treatment as discriminatory. What is directly intended to abolish existing disparity cannot be accused of discrimination....."

It is submitted by the learned Government Advocate that the petitioner No. 1 in his writ petition has categorically stated that his name was recommended by the Medical and Health Minister and also by a member of the Parliament and in spite of the fact that the name of the petitioner No. 1 was recommended by the Medical Minister of a State, he was not given the nomination. Referring to Annexure V to the petition the learned Government Advocate has submitted that the letter dated 2-8-84 was prior to the final list. It is further submitted by the learned Government Advocate that it reveals from Annexure-V that the Medical and Health Minister, when came to know that the name of petitioner No. 1 was not selected in the list, a request was made so that his name should be selected from the quota of the Scheduled Caste community by allotting another extra seat. Therefore, according to learned Government Advocate, it appears that the petitioner No. 1 tried to influence the authority so that he may get a seat, and as he could not be selected, he has come to this Court with this application challenging the validity and legality of the nomination made in favour of 5 candidates. The further submission of the learned Government Advocate is that by nominating the 3 girls, namely, Respondents Nos. 4, 5 and 6 in spite of the fact that the girls were already selected by the Selection Board, the Government felt it necessary to maintain the test and orient equality in the background of the family welfare project and as such, their names were nominated under the special circumstances in view of the provisions as laid down under Rule 18(2) of the Rules and in doing so, there has been no violation of any provisions of the Constitution nor there is any departure from the Rules.

18. We have also heard Dr. N.K. Singh, learned counsel who represents the Respondents Nos. 4 & 5 in this writ petition. The learned counsel has adopted the submissions as made by the learned Government Advocate and has further contended that the petitioners can have no claim against Respondents Nos. 3, 4 & 5 as the petitioners have already relinquished the right of any claim in this writ petition as against Respondent No. 3 and out of the 5 nominated candidates, the petitioners have stated their grievance only against Respondents Nos. 4, 5 & 6. The learned counsel has further submitted that the petitioners have partly agreed to the provisions of Rule 18(2) of the Rules while they have relinquished the claim as against other 2 nominated candidates who got themselves admitted in the medical colleges along with the 3 respondents, namely, Respondents Nos. 4, 5 & 6. Therefore, according to the learned counsel, the petitioners cannot get any relief when the petitioners have conceded to the nomination of other two candidates to be valid and legal.

19. We have given our due consideration to the various contentions raised by the learned counsel of the parties. We must express our opinion that we cannot grant relief to the petitioners on two main grounds. They are --(1) That the petitioners have not raised any dispute regarding the nomination of 2 candidates who were nominated along with Respondents Nos. 4, 5 & 6 under the provisions of Rule 18(2) of the Rules. The petitioners cannot claim that a part of the nomination under Rule 18(2) of the Rules was correct and the other part nominating

Respondents Nos. 4, 5 & 6 was incorrect. If the petitioners went to challenge the entire Rule 18(2), as amended, they must also claim relief against the other two nominated candidates. But they have not done so. (2) The second count is that the Respondents Nos. 3, 4, 5 & 6 along with other candidates have got themselves admitted into the medical colleges in view of the nominations of the Government and they were admitted in the month of November 1984 and they have already crossed a period of nearly 6 months. They have already started their career in the medical science. Will it be fair to drag them from those institutions and to point out to carry out other vocations? Admittedly, the petitioners did not approach this Court in proper time. They even did not challenge the corrigendum earlier but they have come to this Court only when their names were not nominated by the Government even in spite of the fact that the petitioner No. 1 was recommended by the Medical & Health Minister as well as by a Member of the Parliament. The constitutionality of institutional reservation must be founded on facts of educational life and the social dynamics of equal opportunity.

20. Rule 18(2) of the Rules further says that the nomination of the candidates by the State Government should not exceed 10% of the total seats. It has been complied with by the State authority. The total number of candidates selected and nominated are 45 out of which, 30 were for the Regional Medical College at Imphal and 15 were for other States from the Central Pool.

21. Considering the submissions of the learned counsel of the parties we are unable to hold that the corrigendum and the amended provisions of Rule 18(2) of the Rules are in any manner violative of the constitutional provisions and they should be struck down. It is true that when a power is vested on the authority it must be exercised reasonably but standard of reasonableness varies with the situation. It is true that the discretion must be exercised reasonably. Any one entrusted with a discretion must direct himself properly in law. In applying the discretion he must exclude from his consideration, matters which are irrelevant to what he has to consider. However, the discretion must not be arbitrary and capricious. In the instant case, as alluded above, the authority has been empowered under Rule 18(2) of the Rules to nominate the candidates for admission into the Medical Colleges and the nomination so made by the authority can neither be said to be arbitrary or capricious in any manner. Therefore, we are unable to agree with the contention of Mr. Medhi on this point that the nomination was in any manner arbitrary and capricious. Accordingly, we hold that the petitioners are not entitled to get any relief in this writ application as we are unable to issue any writ and/or direction as desired by the petitioners on the facts and circumstances of the case.

22. In the result the petition is dismissed. However, in the facts and circumstances of the case we make no order as to cost.