

(1995) 09 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No's. 18536 of 1994, 9355, 9563, 9684 and 10224 of 1995

Midhuna Nathan and

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : AIR 1996 Mad 178 : (1995) WritLR 851

Hon'ble Judges : Srinivasan, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : K. Sridhar, R. Gandhi for R.G. Narendhiran, M. Baskar, K. Vijayakumar, C. Selvaraju, Mr. Jayachandran for G. Karthikeyan and A. Jayadeeswari, A.L. Somayaji for V. Rangapashyam, for the Appellant; R. Krishnamoorthy A.G. assisted by D. Murugesan, Special Govt. Pleader (Education), E.M. Sundersana Nachiyappan, P. Kannan, R. Raghunathan, B.S. Gnanadesikan, V.K. Nachimuthu, G. Masilamani for R. Balasubramanian, A.R. Nagarajan, for the Respondent

Judgement

Srinivasan, J.

A. INTRODUCTION

1. These five writ petitions are challenging the selection of candidates for the M.B.B.S., Course under the category of seats reserved for Eminent

Sportsmen. The first of the petitions i.e., W.P. No. 18536 of 1994 relates to the year 1994-95. Though it was filed on 31-10-1994 and notice of

motion was ordered on 7-11-1994. it has been pending unfortunately till now. The other four writ petitions relate to the current year 1995-96. The

contentions are similar in all these writ petitions, though to some extent the contentions raised by two of the petitioners are not only not accepted by

the other petitioners, but they have argued to the contrary.

B. FACTS AND PRAYERS.

2. (i) W.P. No. 18536/1994:

The prayer in this writ petition is for a declaration that the selection to the M.B.B.S. course for the year 1994-95 under the special category viz.,

Eminent Sportsmen Quota is null and void and ultra vires the Constitution of India and for a consequential direction to admit the petitioner to the

M.B.B.S. course for the said year in any one of the Medical Colleges in Tamil Nadu. The petitioner has obtained B.Sc., Degree in Zoology. She

passed plus two Examinations in 1991 and has been applying for M.B.B.S. course since then but unsuccessful. She has secured 244.45 marks out

of 300 including the marks in the Entrance Examination.

She has been an outstanding rower from her childhood, having taken part in several competitions. She was a member of the Madras University

Rowing Team, which participated in the Inter-University Tournament at National Level held at Calcutta in February, 1994. Thus, she claims to fail

within the Eminent Sportsmen Category at National Level. During the said year, there was no Eminent Sportsmen of International level.

Respondents 5 to 8 are the selected candidates under the Category, all being Eminent Sportsmen at National level. While Respondents 5 and 6 are

serial Nos. 1 and 2 in the merit list of Eminent Sportsmen-National Level, the 7th respondent is Serial No. 5 and the 8th respondent is Serial No.

15, while the petitioner is Serial No. 26. According to the petitioner, none of the selected candidates excepting one could claim to be eminent

sportsmen and that they had not been sponsored by the appropriate Bodies. According to her, she is entitled to be selected under the said

Category, as three out of four persons selected are not eligible. It is also her contention that the principle of reservation has been applied among the

Eminent Sportsmen, which is wholly illegal and unlawful. It is specifically contended that there cannot be a mini-reservation within a Special

Category of persons, who are grouped together as a source for selection. Two counter-affidavits have been filed, one bearing date 28-11-1994

and another bearing date 25-7-1995. According to them, though the number of seats reserved for the Category was only three, one more seat

was added thereto from the remaining vacant categories as provided in the prospectus. The marks secured by respondents 5 to 8 are respectively

284-30, 282-60, 278.60 and 262.50. Thus, all of them have secured higher marks than the petitioner. It is also stated that the candidates were

selected on the basis of reservation. While the fifth respondent was selected in the open category, the remaining respondents were selected in the

Categories of B.C., M.B.C. and S.C. It is also stated that the " selection was strictly in accordance with the rules prescribed in the prospectus.

(ii) W.P. No. 9355 of 1995:

The prayer in the writ petition is one for issuance of mandamus directing respondents 1 to 3 to cancel the selection of respondents 4 to 7 for the First

Year M.B.B.S. course 1995-96, selected under the Special Category of Eminent Sportsmen and consequently select and admit the petitioner to

the said course. The petitioner has secured 182-50 out of 300 marks. While studying XI Standard he participated and got first place and received

a Gold Medal in the National Level in the 39th National School Games Aquatic Championship held at Goa during December, 1993. He secured a

second place and got a silver medal in the 21st Junior National Aquatic Championship at Bombay during 1994, when he was studying in the XII

standard. Thus, he is a Sportsman of great eminence at National Level. Apart from the aforesaid achievements, he has got to his credit several

other achievements set out in the affidavit. The seats reserved for the category of Eminent Sportsmen should be allotted only on the basis of

eminence in sports and not on academic achievements or marks. The object of reserving the seat for eminent sportsmen is to promote the pre-

eminence in sports and not academic excellence. Unless and until the gold medalists are given a weightage, the reservation itself will be meaningless

as the purpose of reservation will be defeated as the nexus to the object sought to be achieved is violated. There is a vital difference between mere

sportsmen and eminent sportsmen. Every sportsman cannot be an eminent sportsman. Only a few could reach the first or second place who alone

could be termed as eminent sportsmen. It is with that idea, the prospectus enjoins the applicants applying under that category to produce certificate

in the prescribed form, which provided only for those who have secured first place/second place during their study of XI and XII Standards. It is

stated that none of the selected candidates has produced a certificate in the prescribed form, nor were those candidates sponsored by the

appropriate bodies. They have not also secured first or second place in the Championship in which they claimed to have taken part. Hence, the entire selection under the category is void and has to be cancelled. In particular, the 6th respondent, who has been selected as a sportsman at international level, was not sponsored by a National Body. In the counter-affidavits filed by the Secretary of Selection Committee and the selected candidates, the contentions of the petitioner have been refuted and in short it is stated that the selection has been made in accordance with rules and it is not vitiated in any manner. It is also pointed out that in any event, the petitioner will not be entitled to claim selection as he is only 29th in the Merit list of Eminent sportsmen at National level. It is submitted on behalf of the Selection Committee that there were only two applicants under the category for selection as Eminent Sportsmen at international level and both have been selected. They being respondents 4 and 6. Two candidates have been selected as sportsmen at National Level. They are respondents 5 and 7, who are in serial Nos. 2 and 1 respectively in the merit list of Eminent Sportsmen at National Level. Respondents 4 to 7 have filed counter-affidavits asserting that they have been properly selected in accordance with the Rules. The 6th respondents, however, filed two additional counter-affidavits. In the first additional counter-affidavit the 6th respondent has stated that he has participated in the International Badminton Tournament under 18 Contest held by the United Sports Club of Srilanka in May, 1994 and he was runner up in the said Tournament. It is further stated that the said club annually conducts an International Badminton Tournament and individuals and teams from neighbouring countries participate in the same. Participants from four countries viz. India, Singaore, Malaysia and Srilanka had participated in the Tournament. It is submitted that an organisation called TRIAD consultants of Srilanka came forward generally to meet his travelling and accommodation expenses at Srilanka as well as for payment of entry fee for the Tournament. Thus, he had claimed to have satisfied the requirements of the Rules as Eminent Sportsman at International level.

(iii) W.P. No. 9563 of 1995:

The prayer is for a certioratified mandamus to call for the records and quash the selection to the Sports Quota for the year 1995-96 and direct the

respondents to select the petitioner for the First Year M.B.B.S. course. The petitioner has scored 280.34 marks out of 300. She is an outstanding athlete, having won 51 certificates in the District Level and 25 certificates in State Level. She has participated in the Women's National in National Level, She has come first in Relay Race, second in 100 Metres, third in 200 metres at national level. According to her, the selected candidates are not eligible to be included in the category of Eminent Sportsmen. Their certificate have not been scrutinised by the concerned authority. Subsequent to the counter-affidavits filed by the selected candidates, she made specific allegations against the fourth respondent that no International Kabadi Match took place at Vijayawada in 1993 as claimed by the latter and that it was Only an Exhibition Match, which was not sponsored by any National Body. Later she filed another additional affidavit alleging that the fourth respondent was not the person who participated in the Match at Vijayawada and it was another person by name Geetha. The Fourth respondent has filed affidavits denying the allegations made by the petitioner and ascertained that it was she who took part in the National Kabadi Match hold at Vijayawada which was organised by a National Body. As against the fifth respondent, who is the sixth respondent in W. P. No. 9355 of 1995, it is stated that the Tournament in which he claims to have participated is not one sponsored by any National Body and it was sponsored only by a private Club. The fifth respondent has filed a counter-affidavit referring to his counter-affidavit in \V. P. No. 9355 of 1995.

(iv) W. P. No. 9684 of 1995:--

The prayer is for issue of mandamtis directing the respondents to admit the petitioner in any of the Government Medical Colleges in Tamil Nadu on merits. None of the selected candidates has been impleaded as a party to the petition. The prayer is very vague and there is no prayer for cancellation of the selection made. The petitioner has scored 260.66 marks out of 300. He claims to have participated in the State level Athletic Meet. In the affidavit it is stated that the two candidates who were selected under international category are without merits, as to the best of her knowledge, there are no such meritorious candidates who have really participated in the International Level. A reckless allegation is made that the petitioner understands that there is an agency which sells international

participation Certificates for a more sum of Rs. 500/- from Prince of Edinburgh that the candidates participated in drum-beating which is also considered as an international event. There is not even an attempt to set out any reason as to how the selection of the four candidates actually selected is bad. There is another allegation that when there are only three seats allotted for the Sports Quota, the selection of four candidates under that category creates a doubt about the genuineness of the admissions. The respondents have not filed any counter-affidavit separately in this writ petition. But, [he facts which are made available to the Court in the counter-affidavits filed in the other writ petitions and the records placed before the Court are sufficient to deal with this writ petition also.

(v) W.P. No. 10224 of 1995:--

The prayer in this writ petition is the same as in W.P. No. 9355 of 1995. The petitioner has scored 260.92 marks out of 300. She claims to be an eminent sportsman at National level in sparring. She claims to have secured gold medals at National Level in 1991, 1992, and 1994 and at State Level in 1989, 1990, 1992 and 1993. The contentions in the affidavit are almost the same as those found in the affidavit of the petitioner in W. P. No. 9355 1995. Counter-affidavits have been filed by respondents 3, 4 and 6 reiterating the stand taken in the other writ petitions.

C. PROSPECTUS AND THE RELEVANT CLAUSES.

3. The prospectus for 1995-96 sets out in " clause 3 the Categories of Seats, Clause 3.5 enumerates the Special Categories for which seats are reserved in Government Colleges Clause 3,5 (v) reads as follows:--

Seats Reserved for Eminent Sportsmen No. of Seats Reserved in M.B.B.S....3

The candidates seeking admission under this Category shall be considered in the following order of preference:

- (a) Participation at International Level --the candidate having been sponsored by a national body.
- (b) Participation at National Level -- the candidate having been sponsored by a State Body or University.
- (c) Participation at State Level -- the candidate having been sponsored by Zonal or District Association.

Note: The Candidate other than SC/ST should have scored a minimum of 50% marks in each of the subjects prescribed for admission in

M.B.B.S. Course.

Sponsorship Certificate countersigned by the Director of Sports and Youth Service Certifying the fact that the candidate has actually participated

in the International National/State Level Events and that he is eligible to be considered under the Sports Quota should be submitted along with the

application. More inclusion of a candidate in a team will not make him eligible for consideration under the category.

Clause 9.5 is in the following terms:--

If sufficient number of candidates are not available for allotment against any of the 53 seats in M.B.B.S. reserved for the Special Categories listed

under 3.5(i) to 3.5(x) above the vacant seats will be allotted among the special categories itself in proportion to the number of applications

received in each category.

The Rule of Reservation shall be followed for each category/sub-category (under each category) if the seats are increased to four and above due

redistribution of the vacant seats from among other special categories as mentioned above.

Clause 14.5 reads thus:--

Candidates seeking admission against Special Category seats should submit necessary certificates obtained from appropriate authorities in the

prescribed form and submit them along the application to the Selection Committee. (Please see Formats annexed.

The Form of the Certificate with reference to Eminent Sportsmen as found in page 38 of the prospectus is as follows:--

CERTIFICATE EMINENT SPORTSMEN

This is to certify that the applicant..... while studying in 11th (Name in Block letters) 12th standard in the.....School, has secured First

Place/Second Place in District/State/National Level in (Name of the Game) and has been sponsored by District/State/National Body.

OFFICE SEAL SIGNATURE OF THE SPORTS DEVELOPMENT AUTHORITY
OF TAMIL NADU.

D. ARGUMENTS OF COUNSEL

4. The main contention urged on behalf of the petitioners in W. P. No. 9355 of 1995 and 9684 of 1995 is that the prospectus is a self-contained

Code which prescribes the procedure and the criteria for selecting candidates under the Category of Eminent Sportsmen. The rules set out in the Prospectus are binding on the Selection Committee and there cannot be any violation thereof while selecting the candidates. The candidates should have been sponsored by a National Body, a State Body or University or by Zonal or District Association, as the case may be. The candidates must submit the necessary Certificate obtained from the appropriate authorities in the prescribed form along with the Application to the Selection Committee. The rule requiring submission of certificates in the prescribed form is mandatory. The form prescribed in the Prospectus refers to the particular candidate having secured first place/second place in the District/State/National level, having been sponsored by District/State/National Body while studying in the 11th/ 12th standard in the School. The Form must be read as part of the rule and when chuse 3.5(v), clause 19.5 and the Form are read together, it goes without saying that the candidate should have secured first or second place and he must have been at that time studying in 11th or 12th Standard in the School. He should have been sponsored by District/State/National Body for participating in the said Championship. If anyone of the requirements is absent, the candidate cannot be selected. It is contended that importance is given to Eminence in Sports and that is why the Rules in the Prospectus restrict the Category to those who had secured First or Second Place in the Championships. No person who has not secured First or Second Place can be brought within the Category of Eminent Sportsmen. It is contended that in the present case, none of the selected candidates has produced certificate in the prescribed form, The two candidates who have been selected as Eminent Sportsmen at International Level, have not been sponsored by any National Body. It is, therefore, submitted that the selection of the four candidates shall be set aside and the petitioners must be admitted to the course. It is also argued that relief cannot be denied to the petitioners on the ground that there are other persons who have secured more marks than the petitioners but have not approached the Court. The Court is concerned only with those who have approached it in time with petitions for appropriate reliefs.

5. Apart from the aforesaid arguments in general, specific arguments have been advanced as against the two candidates who have been selected as

Eminent Sportsmen at International Level. Learned Counsel for the petitioner in W.P. No. 9563 of 1995 has advanced another argument that the

rule of reservation prescribed in the second part of Clause 9.5 has not been followed in this case and consequently the selection has to be set aside.

6. Per contra, the learned Advocate General representing the State and the Authorities has argued that clause 3.5 prescribes an order of

preference. If there is eminent Sportsman of International Level he will exclude the Sportsman of National level and State level. According to him,

if there are sufficient number of candidates to fill up the quota reserved for Eminent Sportsmen with Sportsmen at International level, there is no

chance for any Sportsmen at National level or State level to be considered. In this case, it is argued that there are only two applicants as

Sportsmen of International level and both have been selected. The remaining two seats have been filled up by Serial Nos. 1 and 2 in the Merit List

of Sportsmen at National Level. His contention is that all sportsmen at international level will be grouped together, they will be ranked according to

their academic marks and selected in that order. Similarly, all sportsmen at National Level will be grouped together and ranked according to their

academic marks. The same is the procedure for Sportsmen at State level. It is submitted by him that the Selection Committee cannot decide the

eminence of Sportsmen by comparing their achievements in the field of Sports or by calculating the number of Medals obtained by them. Such a

method will introduce an element of uncertainty and necessarily arbitrariness. It is pointed out by him that the proper method of selecting

candidates under the Category of Eminent Sportsmen has been clearly laid down by the decisions of this Court and confirmed by (he Supreme

Court. It is submitted that the selection has been done entirely in accordance with the law laid down by the Supreme Court. In so far as the

prescribed Form is concerned, the learned Advocate General has conceded that it is not in accordance with clause 3.5 of the prospectus and,

therefore, not valid. It is well known that a Form cannot prevail over the substantive rule and if there is any discrepancy, the rule has to prevail and

not the form. The learned Advocate General, with his usual fairness, has conceded that the rule of reservation prescribed in the second part of

clause 9.5 of the prospectus is null and void. It is pointed out that the reservation for Eminent Sportsmen is not a reservation contemplated by

Article 15 of the Constitution of India. But is only an identification of a source from which selection has to be made for admission to the Course.

Hence, the general rule of reservation on the basis of Community or Class of people cannot apply.

7. Learned counsel appearing for the selection candidates as well as learned counsel for the petitioner in W.P. No. 18536 of 1994 have pointed

out that the prescribed form at page 38 of the prospectus cannot by any stretch of imagination be accepted as a proper form. In the first place, it

refers only to 11th and 12th standard in the School, overlooking that candidates could have become eminent sportsmen either during their study in

the lower standards or in the University. It is submitted that if for any reason such candidates could not take part of the Tournaments when they

were studying in the 11th/12th standard, they could not be prevented from claiming to be eminent sportsmen. Clause 3.5(v) refers to participation

at National Level by the candidate having been sponsored by a State body or a University. While there is an express reference to University level,

the prescribed form does not make any reference whatever to University. It refers only to sponsoring by District/State/National Body. Further, in

the case of a team event like cricket, foot-ball, hockey etc., no one claims to have secured first place/second place in the Championship. For

example, if a candidate has played cricket for India against West Indies in a Test Match, he cannot claim that he secured first place or second

place, even if the country had won the Test Match. There is yet another serious defect in the form. While it refers to District/State/National level,

there is no mention of international level, which is expressly mentioned in clause 3.5(v)(a) of the prospectus. In view of the aforesaid defects in the

prescribed form, it cannot be considered to be a valid one. Nor can it be considered as part of the rules or used for interpreting clause 3.5 of the

prospectus, inasmuch as it runs counter to the provisions of the said clause and attempts to nullify a part thereof and also drastically restricts its

scope.

8. Learned counsel appearing for the selected candidates have submitted that as a matter of fact those candidates have fulfilled the requirements of

the rules as they have participated in International and National events. It is contended that though cl. 3.5(v) refers to a sponsorship certificate countersigned by the Director of Sports and Youth Service, no candidate has produced such a certificate. Even the petitioners have not produced such certificates. On the other hand, the certificates of merit of all the candidates were submitted to the Director of Sports and Youth Service, who in turn forwarded copies of the same to the Selection Committee along with the covering letter listing out their achievements. The Selection Committee has, after scrutinising the certificates and the letter of the Director of Sports, made the selection in accordance with the rules. Even though strictly speaking there is no sponsorship certificate counter-signed by the Director of Sports, there is substantial compliance with the rule inasmuch as the Director has written a letter to the Selection Committee expressing his approval of the majority of the candidates for being considered under the Category of Eminent Sportsmen. In so far as the 6th respondent in W.P. No. 9355 of 1995 is concerned, it is contended on his behalf that as a fact, he has taken part in an International Tournament of Badminton at Srilanka and had also become a runner-up, which shows that he is an eminent sportsman at International level. His selection should not be interfered with merely because he was not sponsored by a National body. According to learned counsel, when substantial compliance is there and the intention of the rule is satisfied, this Court should not, in exercise of its discretionary power under Art. 226 of the Constitution of India, interfere with the selection. It is also submitted that he has already joined the course and completed two months of study and it will not be possible for him to seek admission to any other course of study at this stage.

E. Precedents and Principles

9. There is no doubt that generally whenever a procedure is prescribed by rules, it has to be strictly followed and the concerned authorities cannot ignore the same. Vide *State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others*, , *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *P. A. Manickam v. The Government of Tamil Nadu represented by the Deputy Secretary, Home Department*, Madras-9, 1984 WLR 1 : 1984 LIC 1085 .

10. There is also no doubt that a prospectus issued by educational authorities is binding on the persons in charge of selection and they cannot

deviate from the norms and rules contained in the prospectus. A Division Bench of this Court considered the meaning of the word "prospectus"

and the nature of the rules contained therein in *Dr. A. Rathna-swamy v. Director of Medical Education, Madras-5*, 1986 WLR 207. The following

passage in the judgment may be quoted with advantage :--

The word "prospectus" is derivative from the word "prospect". One of the dictionary meanings for the word "prospect" is "to look around", "to

make a search", "to explore". A prospectus issued with regard to admission to educational courses is a declaration to the candidates that a field for

development of educational potentialities is available for exploration and that there could be a chance of success. It is a piece of information. But,

at the same time, we shall not belittle the significance of the need to set out in the prospectus itself a summary of an essence of the norms and rules

which should guide and which will be adopted for selection of the competitors in the field of exploration in educational development or at least

indicate in the prospectus that there are norms and rules which shall govern. It is highly desirable that a summary or an essence of the relevant

norms and rules governing such admissions are set out in the prospectus themselves or their existence at least is indicated therein. But an omission

to do so shall not be taken advantage of by any one to negate and ignore the very norms and rules. The very rules and norms have come to be laid

down only to govern and to be adhered to and not to be ignored and breached. It is true that if the relevant norms and rules are set out or referred

to in the prospectus, a controversy of the present nature would have been very wisely avoided. But the omission in the prospectus is not an

omission or erosion or deletion of the very norms and rules themselves. The norms and rules subsist and they have to hold the field.

11, In *Dr. Sanjeev Dadhwal Vs. All India Institute of Medical Sciences*, , a Division Bench of that Court referred to the meaning of the term

prospectus"" as found in the *Lexicon Webster Dictionary* and said (at pp. 272 and 273 of AIR) :--

21. In the *Lexicon Webster Dictionary*, the meaning to the term "prospectus" has been given as follows :--

A brief sketch describing the main features of the proposed enterprise, as the plan of a literary work, or the proposals of a new business; a

descriptive outline of an established organisation, as a college.

22. From the above definition it would appear that the school/college which issues a prospectus gives complete information about itself in it. The

prospectus is the instrument through which the school/college ""holds out"" its contents or ""represents"" to the general public interest.

12. It has been repeatedly held that prospectus issued by the University binds candidates who seek admission unless any term of the prospectus is

held to be illegal and the Court cannot direct either amendment of prospectus or consideration of the claim of a candidate in the manner otherwise

than that provided in the prospectus. Vide Miss. Romini Susan Kurian Vs. State of A.P. and others, ; G. Sumathi Vs. The Director of Medical

Education, Madras and others, and Shakur Chathik M. (Minor) v. Association of Private Schools, 1993 WLR 149.

13. The Supreme Court has held in Sandeep Barar and another Vs. State of Punjab and others, , that the methodology for admission to the

reserve seats for sportsmen/sportswomen in medical college is the function of State and has to be decided by the State Government and that it is

the function of executive to lay down procedure for admission to reserve categories. It is held that the High Court was not justified in that case in

directing that different procedure than the one notified by the State Government to be made applicable to the admissions. In Gurdeep Singh Vs.

State of Jammu and Kashmir and others, , the Supreme Court held that introduction of sports not inclined in the list of approved sports at cut-off

date when applications were invited could not later be introduced to provide eligibility retrospectively to a single candidate and the selection of the

candidate by adopting such illegal means should be quashed.

14. Reservation of certain number of seats for eminent sportsmen has been justified as identification of a different source for selection for

admission. The principles was recognised in D.N. Chanchala Ors. Vs. The State of Mysore and Others, . Rule 4 of Mysore Medical Colleges

(Selection for Admission) Rules (1970) set apart 60 seats for different categories of persons, viz., students from Union territories and States where

there are no medical colleges, students from relatively less developed Common

Wealth countries, cultural scholars and students under T.C.S. of

the Colombo Plan and Special Common Wealth Assistance Plan, etc. Rule 5 provided that out of the number of seats available for allotment after

deducting the number of seats set apart under Rule 4, 15 per cent shall be reserved for persons belonging to the Scheduled Castes, 3 per cent shall

be reserved for persons belonging to the Scheduled Tribes and 30 per cent shall be reserved for persons belonging to socially and educationally

backward classes. The validity of the rules was upheld by the Supreme Court in that case. The law was stated thus :--

As aforesaid, the Government is entitled to lay down source from which selection for admission would be made. A provision laying down such

sources is strictly speaking not a reservation. It is not a reservation as understood by Art. 15 against which objection can be taken on the ground

that it is excessive. Setting apart 60 seats under R. 4 is, as already stated, not a reservation, but laying down sources for selection necessitated

by certain overriding considerations, such as obligations towards those who serve the interests of the country's security, certain reciprocal

obligations and the like.

The same principle was reiterated in State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, .

15. Our attention has been drawn by learned counsel for one of the selected candidates to the judgment of the Supreme Court in Uma Shankar

Sharma Vs. Union of India (UOI) and Others, . The appellant therein was selected for appointment to the post of Inspector of Central Excise.

One of the conditions of eligibility was actual representation of a candidate for a University in an Inter-University Tournament conducted by the

Inter-University Sports Board. The appellant was selected to play in the tournament, but on account of his serious illness he was actually prevented

from participating therein. Referring to the said fact, his services were terminated. The Supreme Court held that there was no dispute that the

appellant did qualify, and was selected, for representing the Mithila University in the Inter-University Tournament at the Banaras Hindu University

but unfortunately he could not actually participate. The Court observed that on a reasonable view of the facts, the appellant should be taken to

have fulfilled the condition of eligibility and said that the terms and conditions of

service were intended to be concerned reasonably and too technical a view would defeat the essential spirit and intent embodied in them. When the intention was to appoint meritorious sportsmen to the posts, that object was served if a person who has qualified and was selected for representing his University in an Inter-University Tournament conducted by the Inter-University Sports Board was appointed, notwithstanding that he was actually prevented from participating because of reasons beyond his control.

16. Yet another ruling of the Supreme Court was cited on behalf of one of the selected candidates in State of Punjab Vs. Bhagwant Singh and Others, . The petitioner therein was a member of the Punjab Agricultural University hockey team, which has participated in the AH India Inter-Varsity Hockey Championship. The team was eliminated at the zonal level. On the basis of the gradation certificate issued to him by the Director of Sports, Punjab, he applied to the 1st year M.B.B.S. in the Sports quota. The Court held that he could not be denied admission on the ground that his team did not reach the finals in the tournament and that he was not qualified for the requisite sports certificate Grade C.II, which was for National level Sportsmen.

17. In the Slate of Tamil Nadu for the First Year M.B.B.S. Degree Course in the Academic Year 1983-84, when the prospectus was issued, it set apart three sets for eminent sportsmen in Annexure I. The prospectus indicated that one person was already selected under pre-medical for 1983-84 and the number of candidates to be selected in that selection were two. The only qualification mentioned there was that they should have participated at State level and All India level sports. Note (b) provided that a pass in the qualifying examination was sufficient to apply for the course. Several writ petitions were filed challenging the entire selection, some of which related to the selection of candidates in the quota for eminent sportsmen. A Division Bench of this court disposed of the entire batch of writ petitions by a common judgment dated 6-4-1984. The case is famously known as Sabitha's case. The petitioners in five writ petitions including Sabitha, who was the petitioner in W.P. No. 9406 of 1983 contended that they should have been selected under the category instead the selected candidates. In the course of arguments, it was urged that the

relaxation in the matter of academic marks for eligibility to apply was malicious and invalid. The Division Bench rejected their contentions and held

that seats were reserved for eminent sportsmen and not merely to candidates having some proficiency in sports. The Bench observed :--

The word "eminent" means, rising above others, conspicuous, distinguished. Therefore, It stands to reason that it is not mere sportsmanship, hut

eminent in sportsmanship, that has to be the guiding principle on which the selection is to be made and the touch-stone on which the selection has

to be tested. To clear any doubt in the matter, it is also stated in the prospectus that in order to merit consideration as eminent sportsman, a

candidate should have participated at State level and All India level sports. Since eminence in sports activities cannot be achieved by a flourish of

the magic wand or by easy methods, but can be achieved only by long, constant and hard work in the sports field or gymnasium, it goes without

saying that the candidate will have to sacrifice a good portion of his study time for attaining eminence in sports activities. It is to effect the sacrifice

made by the candidate of his academic activities, the Government has deemed it fit to prescribe lesser marks of eligibility for applying for M.B.B.S.

course.

The matter can be viewed from another angle also. Sports activities have been encouraged all through the ages in all the countries of the world and

these are days where international sports events are held at different levels in various countries for promotion of sports and international goodwill. It

is not only the ambition of the individual sportsman, but of countries also that as many medals as possible should be secured in international sports

and gymnastic events. There is therefore nothing wrong in the Government giving encouragement to eminent sportsmen and providing three seats

for them each year in the medical course. It cannot also be said that reservation of seats for eminent sportsmen has no nexus to the objects sought

to be achieved. These are days when members of the medical profession are sent on several missions for research and study. Eminent doctors are

being sent on space flights, Arctic expeditions and mountaineering expeditions, to make special studies. We then have the defence services, viz.,

the Army, the Navy and the Air Force, which require doctors to serve in hospitals situated at vulnerable places. For deployment in such missions

or hospitals, medical graduates who have achieved high proficiency in sports activities will certainly be better suited than other graduates who have

not engaged themselves in sports activities, we are therefore of opinion that there is absolutely nothing wrong or unjust in the Government having

reserved three seats for being allotted to eminent sportsmen. We have further to point out that after having applied for admission on the basis that

they are eminent sportsmen, the petitioners cannot assail the reservation of seats for that category or the prescription of standards by the

Government to that class of students.

18. Thereafter, the provision in the prospectus relating to eminent sportsmen was altered and the relevant clause read as follows :--

Eminent Sportsmen

The order of preference is as follows :--

(a) Participation at International level the candidate being sponsored by a national body.

(b) Participation at National level, the candidate being sponsored by a State Body or University.

(c) Participation at State level, the candidate being sponsored by zonal or District Association.

Sponsorship certificate should be produced. If not produced candidate will not be considered under this category.

The said clause came up for consideration in Khalid Hussain v. The Commissioner and Secretary to Government, Health Department, 1987 WLR

91. The petitioner therein had secured 174.5 out of 300 marks. He challenged the selection of three candidates, who were respondents 4 to 6 in

that petition. One of the contentions raised was that the only criterion to be adopted by the Selection Committee was to take into account the

eminence of the candidate in sports and the academic marks should not have been considered. Another contention related to absence of

sponsorship certificate as such. The third contention was with reference to the 6th respondent, who had not actually participated at National level.

Mohan, J. allowed the writ petition as against the 6th respondent only and dismissed the same with reference to the others. He directed the

Selection Committee to go by the order of merit in the waiting list and fill up the vacancy caused by the cancellation of the selection of the 6th

respondent. In the course of his judgment, he negated the first two contentions urged on behalf of the petitioners in the following words :

The category by itself goes by the title amongst the sportsmen. It is the order of preference. Once the candidates are categorised depending upon

the level of their achievement, there is absolutely no possibility of further invidious distinction in determining the eminence in that particular category.

As rightly contended by the learned Government Pleader if a decision as to such eminence is to be arrived at it will be fraught with not only

impracticability but also would raise number of conundrums. What I have in my mind is as amongst the various games, like tennis, hockey, football,

badminton the achievement in which game is to be given preference. Then again in games like cricket what is the method of achievement? Is it

because he happens to be a batsman or a bowler? Then what is to be done with the wicket keeper? Besides, are these persons to be compared

with those who have achieved in the field of athletics. If so what is the yardstick of comparison. Then gymnastics events. There again they cannot

be compared as against sportsmen. Therefore by and large I take it that the policy of reservation seems to be to encourage sports and by

classifying it as eminent sportsmen, as otherwise there will be hundreds of persons claiming as sportsmen. Therefore this is an accent on eminence.

In order to show some distinction with regard to the individual achievements, three categorisations as International level, National level and State

level have been made. Beyond that I see absolutely no scope for importing the concept of deciding eminence inter se in a particular category".

The learned Judge then extracted a passage from the judgment in Sabitha's case (W.P. No. 9406 of 1983 dated 16-4-1984) and proceeded to

say :

But this is far different from saying that amongst the candidates belonging to one category or other, there must be a further distinction as to who is

more eminent than the other. Therefore the above ruling does not help the petitioner in any manner. As regards the requirement of sponsorship

certificate. I have already extracted the relevant portion of Annexure-I but what the object seems to be in my mind is that a mere participation

individually and securing certificate may not be enough. There must be a sponsorship to prove the bona fides. Beyond that there is no magic in

sponsorship. Therefore, notwithstanding the language, employed therein that if sponsorship certificate is not produced the candidate will not be

considered under this category, if the Selection Committee has material otherwise to determine the sponsorship and about the bona fide nature of

the participation of a particular candidate that should be sufficient. In the case of the 4th respondent. I find that there is such a certificate.

Therefore, I do not think that the attack levelled against her could be sustained.

19. That judgment was challenged by the petitioner in the writ petition in so far as it was against him in W. A. No. ! 307 of 1986, Khalid Hussain

(Minor) represented by natural guardian Dr. Akthar Hussain v. The Commissioner and Secretary to Government, Health Department, Madras-9.

The 6th respondent, whose selection was set aside, filed W.A. No. 1302 of 1986, K. Subramanian v. The Commissioner and Secretary to

Government, Health Department, Madras-9. Both the appeals were heard together and disposed by a common judgment dated 28-4-1987 by the

First Bench of this Court, to which one of us was a party. While the appeal filed by the petitioner was dismissed, the appeal filed by the 6th

respondent was allowed and the writ petition was dismissed in entirety. Dealing with the question of participation, the Division Bench pointed out

that the word could not be given a restricted meaning as being equivalent to actually playing in a tournament. The Division Bench said :--

15. The provision with regard to reservation for the special categories refers to participation at international level participation at national level and

participation at State level. When we are considering the case of a sportsman and a member of a representing a State, it would be difficult to give a

restricted meaning to the word ""participation"" as being equivalent to actually playing in a tournament. In the case of a representative team, all the

members of the team must be treated as participants in the game or the tournament, irrespective of whether they have actually played in the game

or not. It is common knowledge that in a team event the number selected to represent a State association is always more than the exact number of

players who can play in an event. Any one in the selected team can be called upon to play as a member of the team and where it is a team which is

participating in a tournament each member of the team must be treated as having participated in the game. Whether they have actually been called

upon to play the game or they were treated as "reserves" to provide for a contingency of being called upon to actually play if necessary. The

meaning of the word "participate" given in the Concise Oxford Dictionary is "have share, take part, (in thing, with person);"

If participation is treated as equivalent to taking part and if the team as a team takes part in any tournament, then each member of the team must also be treated as

having taken part".

Rejecting the argument that the comparative eminence of the eligible sportsmen should have been considered by the Selection Committee, the

Bench said :--

It is not possible to accept the argument that when more than one persons qualify for consideration in each of the categories, that is, those who

have participated at international level, those who have participated at national level and those who have participated at State level, there should be

a further determination with regard to the degree of eminence.

It has to be pointed out that the rules themselves do not provide for any comparative degree of eminence between different candidates in the same

category. Such a determination of comparative eminence, apart from introducing an element of subjective determination and providing a scope for

discretion which could be capable of being arbitrarily exercised in the absence of any guidelines, also appears to us to be impracticable. The

reservation for "eminent sportsmen" is not restricted to any particular game. There are different kinds of games and different kinds of tournaments.

In some games, tournaments are held more frequently than in others. To compare the performance, whether qualitywise or quantitywise, by a

candidate proficient in one game with the performance of a candidate in an altogether different game is neither possible nor feasible.

The proper approach to determine which of the candidates in one particular category should be given a preference in the selection must therefore

necessarily depend only on their academic merit. If there are more than one candidates who have played at international level or national level or at

State level in different games, then each category will form a class by itself and as between them the appropriate guidelines would be to determine

which among them qualify for selection on the basis of their academic record. Merely because a person has taken part in a competition more than

once it does not necessarily indicate his comparative eminence in any particular game or sport,

Regarding the 6th respondent, the Bench held as a fact that he did not participate in a National level tournament. However, the Bench refused to

set aside his selection as the writ petitioner had no chance of being selected in the event of a fresh selection for the vacancy. The Bench held that it

would be unjust to cancel the admission of the 6th respondent on the ground that the view taken by the Selection Committee was erroneous. The

Bench also referred to the fact that the 6th respondent had given up his admission in one institution in a technical professional course and joined the

medical college and that he had undergone the course for about six months by then. The Bench referred to the circumstances that if the judgment of

the learned single Judge was upheld, the 6th respondent shall be left in the lurch as he would lose his seat in the medical course and also be unable

to get admission elsewhere. At the end of the judgment, the Bench administered a note of caution to the Selection Committee and impressed upon

the same the necessity to scrutinise the sponsorship certificates with extreme care.

20. The judgment of the Division Bench was challenged before the Supreme Court in a special leave petition. The Supreme Court dismissed the

same and the judgment is reported in *Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to*

Government of Tamil Nadu, Health Department, Madras and Ors, . The Supreme Court approved of the view expressed by the Division Bench

that there was no provision in the rules for determination of comparative eminence as between the different candidates falling within the same class

and, therefore, their academic achievements should be taken into consideration. The Court said (at p. 2077 of AIR) :--

The rule nowhere provides for any determination of comparative eminence. All that the rule does is to lay down a rule of preference. A candidate

who had participated at International level would exclude a candidate participating at National level and a person who had participated at National

level would exclude a person participating at State level. It has to be pointed out that the rule itself does not provide for determination of

comparative eminence as between different candidates falling within the same class but as between sportsmen who have participated at

International level. National level and State level. It only provides for the rule of exclusion of one by the other. There are no guidelines provided by

which comparative eminence can be judged as between candidates belonging to the same class e.g. at National level, as here. Nor does it provide

for any guidelines by which the choice has to be made as between the candidates who have excelled in a particular field of sports e.g. aquatics.

The real difficulty arises when there are more than one candidates who have excelled in their respective fields of sports e.g. cricket, football,

hockey etc, and the number of seats reserved are less than the candidates found eligible. All of them being more or less equal. The best method is

to go by marks obtained at the qualifying examination. In such a case, the selection must necessarily depend upon their academic merits. Even in P.

Sabitha's case, the court realised the difficulty to lay down any guidelines for adjudging comparative eminence between sportsmen falling within the

same class and it was said that when candidates are shown to have attained equal proficiency in sports, then their academic superiority can be

pressed into service as a tilting factor in their favour.

The Supreme Court also upheld the reasons given by the Division Bench for dismissing the writ petition in entirety in spite of the finding that

respondent No. 6 was wrongly selected.

21. Very recently, the First Bench of this Court had to consider the effect of non-production of the relevant certificate along with the application in

V. Premanand v. State of Tamil Nadu, (1995) 2 MLJ 325, In that case, the petitioner applied for admission to the seat reserved under clause

3.5(viii) of the prospectus issued by the Directorate of Medical Education, Tamil Nadu, for the academic year 1994-95. Under that clause, 12

seats were reserved for children born of inter-caste marriages. The petitioner in that case was born of an inter-caste marriage between a

Scheduled Caste/Scheduled Tribe and forward community. He filed an application for admission within time, but he could not enclose the

Tahsildar certificate with the application as it was not issued to him by that time. He was able to produce the same before the Selection Committee

which considered the applications. However, the Selection Committee rejected the application relying upon clause 13.5 of the Prospectus,

according to which the candidates seeking admission against special category

seats should submit necessary certificates obtained from appropriate authorities in the prescribed form and submit the same along with the application to the Selection Committee. It is to be noted that the said clause is

the same as present cl. 14.5. Holding that the Selection Committee acted arbitrarily while it rejected his application, the Bench said :--

5. It must be pointed out that clause 13.5 only prescribed the procedure in order to eliminate persons who do not belong to that category, to that

undue advantage. As long as it is not in dispute that the petitioner belongs to that category of children born of inter-caste marriage between SC/ST

and forward community and in addition to this, he was able to produce the certificate before the application was scrutinised for admission,

rejection of such application amounted to giving greater value to the procedure than to the substantive right. The procedure is intended to facilitate

enforcement of substantive right and not to defeat the substantive right. Procedure is hand-maid of justice and not to defeat justice".

The above ruling shows that the right to selection is determined by the fact that the candidate belonged to that category and not by the certificate,

which was only a piece of evidence.

22. The following principles can be culled out from the above rulings :--

1. The rules and norms contained in the prospectus are binding on the Selection Committee and the authorities and have to be strictly followed.

2. The special categories for whom seats are reserved are different sources from which selection is made. It is not a case of reservation

contemplated by Art. 15 of the Constitution of India.

3. The rules have to be understood in the light of the intention with which they are framed. The intention should not be defeated by procedural

technicalities. Even in the absence of a certificate as required, the fulfilment of the requirement of the rules can be proved by other materials placed

before the Selection Committee.

4. The Tamil Nadu prospectus sets out the order of preference among the sportsmen:

(i) Participation at International level.

(ii) Participation at National level.

(iii) Participation at State level.

The 1st category will exclude the 2nd and the 2nd will exclude the 3rd.

5. Two basic requirements should necessarily be satisfied in order to make a candidate eligible for consideration :--

(i) Participation in State/National/International sports events.

(ii) The candidate was sponsored by Zonal or District Association/State Body or University/National Body.

6. The eminence of a sportsman is determined by the participation in the sports events at the levels specified on being sponsored by the respective

bodies mentioned in cl. 3.5(v).

7. Once a candidate is found to be falling within a category, there cannot be a further probe into comparative eminence among the persons in that

category. Selection from among them has to be decided on the basis of academic marks.

8. There cannot be selection on the basis of communal reservation from among the eminent sportsmen.

9. Participation in team events cannot be confined to actual playing. It is enough if a person is a member of the team selected to participate in the event.

F. Interpretation of the Prospectus for 1994-95 and 1995-96

23. In the light of the principles set out above, if the provisions in the prospectus are examined, there will be no difficulty in holding that under

clause 3.5(v) the two requisites which are sine qua non are :

(i) participation at international/national/ State level of sports, and

(ii) sponsoring respectively by a national body/a State body or University/Zonal or District Association.

Normally a sponsorship certificate issued by the sponsoring body and counter-signed by the Director of sports and Youth Service should be

produced. In the absence of such a certificate the eligibility for consideration can be proved by other materials to the satisfaction of the Selection

Committee.

24. The last part of clause 3.5(v) declaring that mere inclusion of a candidate in a team will not make him eligible for consideration under the

category is invalid inasmuch as it runs counter to the ruling of this Court in W.A. Nos. 1302 and 1307 of 1986 which was affirmed by the Supreme

Court. That part of the rule will defeat the purpose of the rule. The factum of inclusion in the team which is selected to take part in the event proves

the eminence of the concerned candidate in sports. For example, in a Cricket team selected to play a Test Match, there will be a twelfth man and

two or three reserved. All of them will have to be in readiness to play if called upon to do so. It cannot be said that such players are not eminent

sportsmen of international level. In spite of the Judgment of this Court in W. A. Nos. 1302 and 1307 of 1986 the authorities have introduced such

a condition which would nullify the object of the rule. Even in the course of arguments when we pointed out this aspect of the matter, the learned

Advocate-General stated fairly that he would convey our opinion to the authorities. We are now declaring that of the clause as invalid.

25. We have already pointed out that the second para of Clause 9.5. was conceded to be unconstitutional. We hold that the said para prescribing

the following of the Rule of Reservation (Communal) for each category or sub-category is unconstitutional, null and void. It is to be noted that the

said provision is absent in the prospects for 1994-95. But the Selection Committee applied the rule and selected candidates for admission. When it

was challenged in W.P. No. 18536 of 1994, the authorities have thought fit to introduce the rule by adding the second para to clause 9.5.

Strangely, in the selection for 1995-96, the rule has not been followed. These circumstances given rise to a very strong suspicion that the Selection

Committee is not acting bona fide in the matter. Of course, in the absence of specific acceptable materials, we are unable to proceed further than

that and give a definite finding.

26. No doubt Clause 14.5 requires production of certificates in the prescribed form. But the form found at page 38 of the prospectus does not

need a second look to reject it. The form is not in conformity with Clause 3.5.(v). There is no provision for eminence in sports attained when the

candidate was studying in the University. Nor does the form refer to international level sports. It does not provide for team events in which a player

cannot be said to have secured First Place/Second Place. It travels beyond the rule in Clause 3.5.(v). While in the rule participation at District level

sports cannot be considered for eligibility, the form reads as if securing first place/second place in District Level games is sufficient. Further, the rule

in Clause 3.5.1(v) talks of participation at International/National/State level having been sponsored respectively by a National Body/ State body or

University/Zonal or District Association, but the Certificate reads, District/State/National level having been sponsored by District/State/National

Body. To say the least, it is absurd on the face of it. We wonder whether a sane human brain could have thought of prescribing this form. It is

rather strange that vehement arguments are advanced that the form should be read as part of the rule. We have no hesitation to reject the said

arguments and strike down the form at page 38 of the prospectus for 1995-96 as invalid, null and void. Non-production of a certificate in that form

is inconsequential and does not affect the eligibility of the concerned candidate.

G. FINDINGS.

27. 1. W.P. No. 9355 of 1995:-

All the contentions of the petitioner excepting one are rejected. The only contention which is accepted is that the 6th respondent Mohankrishnan is

not eligible for selection as an eminent sportsman of International level as he was not sponsored by a National body. We have gone through, the

records of all the selected candidates. We find that the fourth respondent K.A.P. Geetha has participated in an International Kabadi Tournament

having been sponsored by a National Body. She has been rightly selected in that category. We also find that the 5th and 7th respondents viz.,

Shahid J.S. and Ramya B. have been rightly selected in the category of National level sportsmen.

28. As regards Mohankrishnan, he has admitted that he was not sponsored by the National body. He does not satisfy the requirement of the rule.

It is argued that he was a runner up in the Championship, which was an International tournament inasmuch as representatives of four countries took

part and he is an eminent sportsman of international level. It is also contended that the rule should not be strictly enforced particularly in view of the

facts that all sports organisations are only private bodies. We are unable to accept the argument. The very idea of the rule is that the eminence of

the sportsman should have been recognised by a National body so as to be sponsored for an international event. It should be more or less a case

of representation of the country as such that is why sponsoring by a National body is insisted upon. If a person arranges on his own to play in a

tournament in which players from other countries have taken part, he cannot be considered to have satisfied the rule. He cannot be preferred as an international level sportsman.

29. But in so far as this writ petition is concerned, no relief can be granted to the petitioner as he has secured 182.50 marks only and stands at

Serial No. 29 in the merit list of National level sportsmen. He does not stand any chance whatever of being selected. Hence we would follow the

decision in *Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu,*

Health Department, Madras and Ors, and dismiss the writ petition.

2. W.P. No. 956) of 1995:--

30. This petitioner attacked the selection of K.A.P. Geetha (4th respondent) on several factual grounds. We find no merit in any of them. We hold

that the fourth respondent is a sportsman of international level and has been rightly selected under the category.

31. But this petitioner's challenge of the selection of Mohankrishnan (5th respondent in this W.P.) has to be upheld. We have already found that

the said fifth respondent cannot be considered for the category of international level sportsman. If he falls in the National level category, he will be

occupying the 15th place in the Merit List. The petitioner in the writ petition is occupying the third place. The 6th and 7th respondents are

occupying places 1 and 2 respectively. Hence, the petitioner will get selected, if the selection of the fifth respondent is set aside.

32. Learned counsel for the fifth respondent contends that the fifth respondent has joined the course and studied for two months. It is argued that

he will be left in the lurch if his admission is cancelled now. No doubt the position of the fifth respondent is pathetic. But we cannot uphold his

selection which is unjust and unlawful. When the rule is so clear, there is no justification for the Selection Committee to have selected him.

Obviously, the Selection Committee has not applied its mind to the materials on record.

33. The Supreme Court had occasion in *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, to consider a similar situation and said:

9. What remains to be considered is whether the selection of respondent No. 6 should be quashed. We are afraid, unduly lenient view of the

courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even

where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and

sympathetic view of matters. This is the very essence of justice. But considerations of judicial policy also dilute that a tendency of this kind where

advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself, engender cynical disrespect

towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains

achieved by such wrong could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of

courts into private benevolence. This tendency should be stopped.

They quashed the selection of the 6th respondent therein reluctantly. We have to perform a similar duty in this case and quash the selection of the

fifth respondent Mohan-krishnan. If the petitioner had not secured the third place in the Merit List, we would not have interfered with the selection.

3. W.P. No. 9684 of 1995:--

34. The petitioner has not chosen to implead any of the selected candidates. Nor does she stand a chance of selection in the sports category as she

is only a State level sportswoman. Even there, she is the 56th in the Merit List of State level Sportsmen. Hence, there is no merit whatever in the in

the writ petition and it deserves to be dismissed.

4. W.P. No. 10224 of I 995:

35. Our reasoning in W.P. No. 9355 of 1995 will apply in this case. The petitioner is the 13th in the Merit List of National level Sportsmen and

stands no chance of selection. Hence, the writ petition deserves to be dismissed.

5. W.P. No. 18536 of 1994:--

36. As stated earlier, this writ petition relates to the Academic year 1994-95. It is Very unfortunate that this writ petition could not be disposed of

earlier and for some reason or other has been kept pending till now.

37. One of the contentions urged by the petitioner is well founded. The Government Notification in G.O.Ms. No. 443, Health and Family Welfare

Department, dated 9-6-1994 laying down the policy, procedure, etc. for

admission of candidates to 1 Year M.B.B.S./ B.D.S./B. Pharmacy/B.Sc. (Nursing) and Bachelor of Physiotherapy Courses, 1994-95 session does not contain any provision for reservation on communal basis for selection under the Special categories, while it expressly provides for such reservation in the General Category. Consequently, the prospectus issued for 1994-95 did not contain any provision for the application of the rule for reservation as found in the prospectus issued for the current year 1995-96. However, the Selection Committee made bold to apply the rule and grant admissions on that basis. In spite of the petitioner raising specific objection as to the validity of the selection on the ground that rule of reservation had been applied without there being any sanction therefore in the prospectus, the two counter affidavits filed by the then, Secretary of the Selection Committee and the present Secretary of the Selection Committee do not make any attempt to explain as to how and why the rule of reservation was invoked by the Selection Committee. Both the counter affidavits have stated as a fact that the four seats in the Special Category were filled up by four-candidates in accordance with the rule of reservation belonging to O.C., B.C., M.B.C., and S.C. Though the two counter affidavits referred to the admission of Mr, Elangovan, the fifth respondent in the Open Category, the records show that he was only a B.C. candidate. In fact, the Merit List of Eminent Sportsmen National Level for the year 1994-95 shows him as a B.C. Candidate. There is no attempt in the two counter affidavits to explain how he was selected in the open category. But, in G.O. (Ms) No. 209, Health, and Family Welfare Department, date 3-4-1995, laying down the policy, procedure and guidelines for admission of candidates to 1 Year M.B.B.S./B.D.S./B. Pharmacy/B.Sc. (Nursing) Bachelor of Physiotherapy/(B. P. T) Bachelor of Occupational Therapy (B.O.T.) Courses, 1995-96 Session, a provision is introduced in clause 8 that if the seats for each special category are increased to four and above due to distribution of the vacant seats from among other special categories the rule of reservation on communal basis shall be followed. Pursuant thereto, a provision is made in the second paragraph of Clause 9.5 of the prospectus. Such a provision is clearly unconstitutional. Even at the beginning of his arguments, the learned Advocate General had conceded that the rule of reservation ought not to have

ben made applicable to the special category of eminent sportsmen and the provision is bad in law. Hence, we declare that clause in G.O. (Ms)

No. 209, Health and Family Welfare Department, dated 3-4-1995 is unconstitutional and void and consequently, the second paragraph of clause

9.5 in the prospectus of 1995-96 is also unconstitutional. We are doing so in order that such a provision is not introduced in future by the

Government. Strangely, when there was no provision for reservation in 1994-95, the Selection Committee chose to apply the rule. That itself is

sufficient to vitiate the selection of four candidates in the special category under clause 3.5 (v) for the year 1994-95.

38. The records have disclosed another distressing feature. The 7th respondent by name P. Rajkumar is in Serial No. 5 in the Merit List of eminent

Sportsmen -- National level. Respondents 5 and 6 by name Elangovan and Lionel Raj are in Serial Nos. 1 and 2. In the absence of the rule of

reservation, both respondents 5 and 6 would have been selected and they have been rightly selected. But the 7th respondent could not have been

selected if the rule of reservation had not been applied. Serial Nos. 3 and 4 by name Anandhi, J. and Roche, J.A. who had scored higher marks

than the 7th respondent, ought to have been selected. It is noticed by us that in the application of the 7th respondent in Column 4, while mentioning

the name of parent, the 7th respondent has also chosen to mention that his father belonged to I. A.S. We do not find any provision for mentioning

the status of occupation of the parent in the Application Form in column 4. No other candidate had chosen to mention the same. The 7th

respondent is the only, person who had mentioned that his father belonged to I.A.S. Further, we find that the Member-Secretary of the Sports

Development Authority had chosen to make a special recommendation in favour of the 7th respondent and addressed a letter on 29-6-1994 to the

Registrar, Engineering Selection Committee, the Director of Technical Education, Madras and the Secretary, Medical Selection Committee with a

copy to the candidate in addition to the usual letter which the said authority sent to the Secretary, Medical Selection Committee with regard to all

the other candidates applying under the eminent sportsmen category. The usual letter is found in Roc 8266/E1/94 dated 28-6-1994. That is the

form in which letters were sent last year and also this year by the Member-Secretary, Sports Development Authority to the Selection Committee.

In this particular case, with regard to the 7th respondent, the Member-Secretary had taken upon himself the task of writing a special additional

letter in Roc 8266/E1/94 dated 29-6-1994, the first sentence of which reads as follows:--

I am happy to recommend to you Thiru P. Rajkumar, son of Thiru V. Palanichamy, I.A.S. who has applied for admission to the Professional

Courses, B.E., B. Tech. and B.E. (DOTE) and M.B.B.S. -- Sports Quota.

The letter proceeds to proclaim the achievements of the candidate in the field of sports. In the second paragraph, the Member-Secretary has

stated that apart from the proficiency in the Sports referred to in paragraph 1 the candidate has also done well in Basket-Ball and Cricket. It is

then said, ""As an all rounder, he will do any institution to be proud excelling both on the academi side and in Sports and Games"". In the next

paragraph the first sentence reads as follows:-- ""I recommend him whole-heartedly for being allotted a seat under Sports Quota. ""There was a

clear attempt on the part of the Member-Secretary to influence the Selection Committee to admit the 7th respondent through the said letter and

also informing them that the 7th respondent is the son of a person who belong to Indian Administrative Service. It is evident therefrom that the

Selection Committee introduced the rule of reservation in spite of there being no provision therefore in the prospectus only in Order to give

admission to the 7th respondent, as otherwise, he could not have been selected. We have no doubt whatever that the selection of the 7th

respondent was vitiated by gross nepotism. Even if it could be contended that factual mala fide cannot be inferred from the available materials, it is

a clear case of mala fides in the eye of law.

39. Had this writ petition been heard by some time last year, we would have had no hesitation to set aside the selection of the 7th respondent and

the 8th respondent and directed the Selection Committee to make a fresh selection for the two vacancies. Now, the 7th respondent and the 8th

respondent have already undergone the course for more than a year and it will be causing grave injustice to them to set aside their selection at this

distance of time. Moreover, the petitioner, who was No. 26 in the Merit List of Eminent Sporsmen-National level had no chance of being selected

under that category, even if the selection of all the four respondents i.e.,

Respondents 5 to 8 is set aside. In the circumstances, we are unable to issue the writ as prayed for by the petitioner. If this writ petition had been filed by J. Ananthi or J. A. Roche, who had secured more marks than the 7th respondent, we might have allowed the writ petition, in spite of the delay in disposal, as they could not have been made to suffer for the Court's delay.

40. In this connection, we would like to refer to the following observations made by the Supreme Court more than 12 years ago in Punjab

Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, :--

It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and

objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules

and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly

or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral value on the part of the

administrators and teachers alike. But, the problem which the Courts are faced within these cases is, that it is not until a period of six months or a

year elapses after the admissions are made that the intervention of the Court comes into play. Writ petitions involving a challenge to such

admissions are generally taken up by the High Courts as promptly as possible but even then, students who are wrongly admitted finish one or two

semesters of the course by the time the decision of the High Court is pronounced. A further appeal to this Court consumes still more time, which

creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the

Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the

consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an

educational institution by means, fair or foul : Once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions.

5. We find that this situation has emboldened the erring authorities of

educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact, even If the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reasons that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution. We might have been justified in adopting this course in this case itself, but we thought that we may utter a clear warning before taking that precipitate step. We have decided, regretfully, to allow the aforesaid sixteen students to continue their studies, despite the careful and weighty finding of the High Court that at least eight of them, namely, the seven wards of employees and Ashok Kumar Kaushik, were admitted to the Engineering Course in violation of the relevant rules and regulations.

41. In spite of the clear warning issued by the highest Court of the Country in April, 1983, the Tamil Nadu Selection Committee had chosen to violate the norms set out in the prospectus and grant admission on extraneous consideration by unlawfully applying the rule of reservation, which was wholly inapplicable.

42. Though we regretfully express our inability to set right the situation by setting aside the selection of Respondents 7 and 8 for the reasons mentioned above, we can certainly punish the miscreants by directing them to pay heavy costs to the writ petitioner, but for whose efforts the atrocity committed by the Selection Committee last year would not have come to light. We are also of the opinion that the 7th respondent should also be made liable to pay costs to the petitioner. We have to dismiss the writ petition with great reluctance.

43. The aforesaid facts were found out by us when we went through the records after reserving orders on 20-9-1995. We directed the matter to be posted in the list for further arguments on 25-9-1995 and heard counsel on both sides with regard to the above facts. Thus, the parties on both sides had opportunity to have their say in that regard.

H. CONCLUSION

44. Clause 8 of G. O, (Ms.) No. 209, Health and Family Welfare Department,

dated 3-4-1995 and the second paragraph of Clause 9.5 in the Prospectus for 1995-96 are declared unconstitutional and struck down as such.

45. (i) W.P. Nos. 9355, 9684 and 10224 of 1995 are dismissed. There will be no order as to costs.

(ii) W.P. No. 9563 of 1995 is allowed. The selection and admission of the fifth respondent Mohana Krishnan are quashed. A direction is issued to

Respondents 1 to 3 to admit the writ petitioner, Selvi. S. Nithila-krishna, to the First Year M.B.B.S. Course for the year 1995-96. There will be

no order as to costs in this writ petition.

(iii) W.P. No. 18536 of 1994 is dismissed. But, for the reasons stated earlier, we direct the Members of the Selection Committee for 1994-95 for

undergraduates the third respondent and W. C. Davidar, Member-Secretary of the Sports Development Authority of Tamil Nadu, 4th respondent

herein, to pay a sum of Rs. 9,000/- to the writ petitioner by way of costs from out of their personal funds. The State Government shall pay the

amount in the first instance and collect it from the said individuals later. We also direct the 7th respondent to pay a sum of Rs. 1,000/- to the writ

petitioner by way of costs.

46. Order accordingly.