

(1986) 05 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5627 of 1985

Miss Kausar Effendi

APPELLANT

Vs

Gorakhpur University and Others

RESPONDENT

Date of Decision : 21-05-1986

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1986) 05 AHC CK 0027

Hon'ble Judges : K.N. Misra, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : D.P. Singh, for the Appellant; C.S.C., S.C. (Cent. Govt.), Abid Ali, Mohd. Sajeed, Z. Jilani, S.N. Shukla and Rakesh Sharma, for the Respondent

Final Decision : Partly Allowed

Judgement

Brijesh Kumar, J.—This writ petition is similar to the bunch of writ petitions filed by the candidates who could not be selected in the Combined Pre-Medical Test held in the year 1985 for admission to different Medical Colleges. We are deciding this petition separately as in this case the nomination of opposite party No. 6 made by the Central Government to the M.B.B.S. Course in Moti Lal Nehru Medical College, Allahabad, has also been challenged. Other writ petitions constituting the bunch do not involve the question of validity of nomination made by the Central Government though some other questions are common.

2. In this petition the disputed questions are question No. 70 and question No. 84 of the Chemistry paper. Question No. 70 is as follows:

70. Which of the following fuel gases have volume composition

30% CH₄ 48% H₂ 15% O₂ 3% CO

(1) Oil gas (2) Water gas (3) Coal gas (4) Petrol gas

The key answer is option No. 4 whereas the answer given by the Petitioner is alternative No. 3 of the options. By means of our judgment delivered today, in

the bunch of the writ petitions in which question No. 70 of Chemistry paper was involved we have already held that the key answer is demonstrated to be Incorrect and Petitioners are entitled for three marks for the answer given and one mark which has been deducted by way of negative marking. On the same reasoning we hold that the present Petitioner is also entitled for four marks in question No. 70 of the Chemistry paper. Question No. 84 is as follows:

84. Ethyl hydrogen sulphate is obtained by reaction of sulphuric acid on:

(1) Ethylene (2) Ethane (3) Ethyl Chloride (4) Ethanol The key answer is alternative No. 1 and the answer given by the Petitioner is alternative No. 4 out of the alternatives given in the question paper. In the bunch of writ petitions namely writ petition No. 5237 of 1985 Abdul Salaam v. Gorakhpur University we have held that both the answers are correct and the Petitioners are entitled for 4 marks that is to say 3 marks for correct answer and 1 mark which has been deducted by way of negative marking. On the same reasoning the present Petitioner is also entitled for 4 marks in question No. 84 of Chemistry paper.

3. It has been submitted that there is calculation mistake in respect of the marks of the Petitioner in Physics paper. Two marks have been left to be added in the total marks obtained by her in Physics paper. The learned Counsel for the Gorakhpur University, had original copy of the petitioner and after checking from that, has conceded that there is calculation mistake of two marks as alleged by the Petitioner. We, therefore, hold that two marks shall be added to the marks obtained or her in Physics paper.

4. On behalf of the Petitioner it has next been argued that the nomination of opposite party No. 6 Miss Gurus Abide, by the Central Government to the M.B.B.S. Course in Moti Lal Nehru Medical College, Allahabad, is invalid. It has been prayed that the nomination of opposite party No. 6 be cancelled and the Petitioner be ordered to be admitted in her place in King George Medical College, Lucknow. The Petitioner has appeared in the Competitive test but she has not been selected. She was not a candidate for nomination by the Central Government. Her grand total after adding 2 marks, which were not added in her Physics paper, comes to 833 marks After adding 4 marks each in Question No. 70 and 84 Chemistry paper her grand total exceeds 835. She then becomes entitled for admission to M B.B.S. course In view of this fact her prayer for quashing the nomination of opposite party No. 6 and claim for her own nomination in place of opposite party No. 6 becomes infructuous. However, since the nomination has been challenged and submissions have been made on behalf of the parties concerned we would like to refer and discuss the submissions made. It appears that in all the State Medical colleges in India the Central Government has some seats reserved which are filled up by nomination by the Central Government. These seats are called as seats of Central Reserve Pool. The submission made on behalf of the Petitioner is that the nomination of opposite party No. 6 is mala fide and by way of undue advantage given to her by reason of the fact that she is daughter of an Ex-Member of Parliament. It has next been submitted that there

was no notice of the fact to the candidates that some seats were to be filled up by nomination by the Central Government. It has been asserted that neither the prospectus nor the advertisement indicated about the filling up of certain number of seats by nomination. It is contended that had the Petitioner had any knowledge or notice of the fact of filling up of the seats by nomination she could also avail of the opportunity by approaching Central Government for her nomination. It appears that at the time of the filing of the writ petition and subsequently when by amendment paragraph 24A was added it was not within the knowledge of the Petitioner as to on what ground and against which category the opposite party No. 6 had been nominated. A plea, therefore, was raised the nomination of opposite party No. 6 who is a resident of State of U.P. and similarly situated as the Petitioner was, invalid. In the counter affidavit it was disclosed that opposite party No. 6 was nominated as she had excelled in sports. It has been contended on behalf of the Petitioner that reservation of seats for sports-men is not valid and in that connection he has placed reliance on a case decided by Kerala High Court on the point. In her rejoinder affidavit the Petitioner has averred that she is also a good sports-woman and was entitled to be considered for her nomination on that ground.

5. Before we deal with the point regarding validity of nomination we may point out at the outset that the learned Counsel for the Petitioner has clearly stated that he does not dispute the right of the Central Government to make nomination to fill up certain seats in the State Medical Colleges. So far the question, that the nomination of the opposite party No. 6 is mollified is concerned, the relevant allegation is contained mainly in paragraph 21 of the writ petition wherein it has been stated that according to information received by the Petitioner through reliable source the father of opposite party No. 6 is an Ex-member of Parliament who has got close link with some key personnel of the Ruling party of the State of U.P. and Central Government and it was under his political influence that the nomination of opposite party No. 6 has been made, in the counter affidavit filed on behalf of the Central Government as well as by the opposite party No. 6, allegations of political influence alleged to have been exercised by the father of the opposite party No. 6, have been denied. We find that on the material placed by the Petitioner on the record, it is not possible to come to the conclusion that the power of nomination vested in the Central Government has been exercised mala fide and not in good faith. The averments of general nature that the father of the opposite party No. 6 an ex.-Member of Parliament, has links with key person and it was under his political influence that he got the nomination of opposite party No. 6 manipulated is too vague and unspecific to record any finding upon its basis. We may now proceed to see whether the power vested in the Central Government has been exercised bona fide. In paragraph 2A of the counter affidavit dated 3rd March 1986 filed by C.L. Bhatia on behalf of the Central Government and in paragraph 2 to the counter affidavit dated March 24, 1986 again sworn by C.L. Bhatia, policy regarding nomination against the Central Pool Seats by the Central Government has been given out. Paragraph 2A of the Cornier affidavit

dated 3.3.86 is being reproduced as follows

2A. That the Government of India in the Ministry of Health and Family Welfare makes a request every year to the Mate/ Union Territory Governments with medical colleges and to certain medical institutions to make available a certain number of MBBS seats in the "Central Pool". The number of such seats varies from year to year.

Some of the seats are allocated to the State Government/UT Administrations which do not have any medical college of their own. Some seats are placed at the disposal of the Ministry of External Affairs for being allotted to salt-financing foreign students, and children of Indian personnel posted in our missions abroad. Some seats are allocated to the Ministry of Education for General Cultural Scholars from abroad and Tibetan refugees. Similarly, some seats are allocated to the Ministry of Nuance. Department of Economic Affairs for foreign students coming under the Colombo Plan. Seats are also allocated to the Ministry of Defense for children of Defense Personnel and the Ministry of Home Affairs for children of Border Security Force personnel, Central Reserve Police Personnel and repatriates from Sri Lanka and Burma. Seats are placed at the disposal -pf Cabinet Secretariat for children of special Security Bureau personnel. Other deserving cases like children of freedom fighters, handicapped children, sports men, etc. are considered.

The applications for selection are processed by the authorities concerned to whom the seats are allocated and nominations against the allocated seats are made by such authorities.

From a perusal of the above averments it is clear that nomination are made against different types of categories which also includes the wards of Freedom fighters, handicapped children, sportsmen etc. A perusal of paragraph 2 of the counter affidavit sworn by C.L. Bhatia dated March 24, 1986 would indicate that for different categories there is Inter Ministerial Selection Committee which selects the candidates for nomination on merit. The applications received against the seats placed at the disposal of Department of Rehabilitation are processed by the Rehabilitation Department on merits. So far the candidature for nomination as against Sportsmen is concerned that is done by the Ministry of Health. While submitting that the nomination of opposite party No. 6 by the Central Government was done in bonfire exercise of its power and on the basis of material before the Central Government, we directed the learned Counsel appearing on behalf of the Central Government to place before the court the relevant material which was taken into account to nominate the opposite party No. 6 as a sportswoman. The learned Counsel for the Central Government, who had original record with him, placed it before us. We found that there were number of certificates of merit awarded to opposite party No. 6 in different games and sports. She had participated in Inter District Sports Meet and had also represented the State of U.P. in certain games. Therefore, it cannot be said that there was no material before the Central Government for having made

nomination of opposite party No. 6 as Sportswoman nor it could be said that it was in any manner malaise exercise of the power.

6. Relying upon a case reported in *R. Jaicob Mathew v. State of Karalla* AIR 1964 Kerala 39 learned Counsel for the Petitioner has submitted that legally there cannot be reservation for admission to the professional course for sportsmen It is a single judge decision and in paragraphs 121 and 122 the question regarding reservation of seats for sportsmen had been considered. This question has been considered along with reservations made for admission to the Medical Colleges for children of registered Medical Practitioners. Both these questions: reservation for children of registered Medical Practitioners and Sportsmen have been dealt with together. The learned Judge has observed that sports have to be encouraged but unless the State is able to satisfy that the said plea can be accepted by the Court, on a legal basis, the State cannot succeed on that aspect. Again expressing sympathies to the necessity to encourage sports, the learned judge observed that there was no legal basis for sustaining the reservation as it must be on proper classification and there must be reasonable relation to the object sought to be achieved. The object sought to be achieved is to get the best amongst the students population for admission into professional Colleges, therefore, the classification for sportsmen or for children of registered Medical Practitioners has not been found to be reasonable, we, however, feel unable to subscribe to the view of the learned Single Judge of Kerala High Court and with due respect we are not inclined to follow the view taken in the said case. The object to get the best amongst the student's population for admission to the professional colleges is achieved through the general category i. e. selection of / students through competitive test. Most of the seats leaving a few are filled up through competitive test. The object to fill up seats by nomination is not to select only the best academically amongst the students population. In making reservations or investing itself with power to nominate there is always an object to "meet out some special treatment to a particular category other than the general category. This is done taking into consideration various exigencies of the situation or the prevailing conditions. In this case we find that the - entrap Government has invested itself with the power to make nominations in different Medical Colleges all over India and has formulated a policy in that regard. From that policy it is apparent that different types of situations have been taken into account as is evident from paragraph 2A of the counter affidavit quoted earlier. If the reason given in the case of *R. Jacob* (Supra) is applied then no nomination made under the policy decision taken by the Central Government would be valid inasmuch as the nominees may not be the best amongst the student population which, according to the case referred to above, is the objective to be achieved in making admission to the Professional College. While laying policy of nomination many considerations have been taken into account by the Central Government, for example to provide facility of medical education to the students of certain States where there are no Medical Colleges or wards of persons engaged in foreign service or defense personnel and so on. There are reasons for laying

down such policy for the purpose of admission. The learned Counsel for the Central Government has cited before us *Km. Chitra Ghosh v. Union of India* 1970 SC 35 and has submitted that a part of the policy of the Central Government for nominations as it then existed was upheld by the Supreme Court. True, it appears that in the policy as then existed category of sportsman for being nominated was not there. The learned Counsel for the Central Government has stated that this category along with few others has been included in the recent past. However ten other categories were subject matter of attack in that case and it was held that it was within the powers of the Central Government to lay down a policy in the matter of admissions by nomination of certain categories of students based on reasonable classification. In our opinion, while making reservation or retaining the power to nominate there is always some concession in favor of a particular category of persons who are treated differently from the general category. If this element be not there perhaps there may not be any necessity to have reservation or to retain power to nominate, therefore, we are unable to subscribe to the observations made in the case of *R. Jacob* (Supra) to the effect that while making the admissions the only object which is sought to be achieved is to have the best amongst the population of students offering themselves for admission. This is only true in regard to students of general category. So far nominees are concerned they may not fare as good comparatively if compared with the students of general category who have rested their admission on academic merit alone.

7. Now we have to see whether the classification of Sportsmen for the purpose of admission to the Professional Colleges is a reasonable classification or not. In the case of *R. Jacob* (Supra) it has been observed that sports need be encouraged. The need to encourage sports and sportsmen during the last two decades since when that judgment was delivered in 1964 has increased manifold. Sports Directorates have been established, sports Colleges have been set up and there is now a Ministry of Sports as well. Importance of games and sports need not be emphasized. In this background, if some concession or encouragement is not given to sportsmen many students who also have talents in the field of sports and games may feel discouraged and may yield out of the field of sports abandoning their pursuit for excellent many achievements in that field. We find that no relaxation in minimum educational qualification for admission to the Medical Colleges for sportsmen has been made in the policy laid down by the Central Government. If some concession is sought to be given for such students, in lieu of their dedication and devotion of time in achieving excellence in sports, it cannot be said to be something unreasonable. Sri Gopal Subramanyam, appearing on behalf of the Central Government has stated that particularly no fixed quota has been reserved for sportsmen in the policy. He has further stated that if in a particular year there is no suitable candidate amongst sportsmen, may be that there is no nomination from amongst sportsmen at all, it is not that someone has necessarily to be nominated from that category. It has further been stated that the Central Government has nominated only two students from the

category of sportsmen in the State Medical Colleges in the whole of Uttar Pradesh. If we examine the percentage of nomination of sportsmen, looking to the number of seats, which have been filled on the basis of the competitive test on merits it would be negligible. There were 779 seats for MBBS course to be filled up through competitive test. The percentage of two seats as against 779 would come somewhere .25% to .30% only. Such a negligible percentage, in our opinion, would not in any case militate against filling up of the seats on the basis of academic merit. In our opinion such small concession made to the students for the purpose of admission in the Professional Colleges would provide encouragement and impetus to the students to pursue their Endeavour for achievements and for achieving excellence in the field of sports and games. We are, therefore, of the view that classification of sportsmen for the purpose of admission by nomination is a reasonable classification.

8. Now we come to the next argument which has been advanced challenging the nomination. The submission is that there was no notification, publication or any clause in the prospectus or in the advertisement indicating that some seats in the State Medical College in U.P. were also to be filled up by nomination from different categories including category of sportsman. It has been fairly conceded on behalf of the opposite parties that no such information was published either in the prospectus or in the advertisement. The contention is that it should be made known to all concerned that such nominations are to be made so that those who feel that they respond to the discretion of a particular category may approach the Central Government for being considered for nomination. We find some force in this contention from the affidavit filed on behalf of the Central Government it appears that in respect of certain categories applications are received and those applications are processed through some sort of selection committee called Later Ministerial Selection Committee or so. So far category of sportsmen is concerned the candidature is considered by the Ministry of Health and it takes into account the material placed before it by a candidate who is desirous to be nominated against that category. We think that it is necessary that all concerned should be made aware of existence of different categories against which nominations are made for filling up the seats in the Medical Colleges. Even those who take chance in the competitive examination in the general category may also approach the authorities concerned for being considered for nomination, it may not be necessary to invite applications for being considered for nomination but certainly all concerned should have the knowledge or the awareness of the fact that certain seats are to be filled up by nomination against particular categories. The nomination cannot be restricted amongst a few who have some special source of knowledge to know about it and avail of the opportunity alone. There may still be some students who may have better record in both fields namely academic career as well as in the field of sports in comparison to one who has been chosen for nomination. Such persons should not be deprived of being considered, if they so wanted to be considered, merely because of the fact that they had no means to come to know about the nomination policy, concerned persons should not be

deprived of the opportunity to be considered by not making it known to them. The opposite party No. 6 has filed a supplementary counter affidavit dated 5.4.66. In paragraph 3 of the said counter affidavit she has say that on coming to know about inclusion of sportsmen quota for nomination in the MBBS Course her bad bonfire applied for her nomination to the Ministry of Health, Government of India and in support of her application had submitted relevant certificates to show that she is a sportswoman. From the above averments, though it is not mentioned as to how she had come to know about the nomination against sports category but since she had come to know about it she could approach the Ministry of Health, Government of India. The others could also very well do the same had they come to know about it. In this connection we may look to the counter affidavit filed on behalf of the Central Government dated 24.3.1986. Paragraph 3 of which reads as follows:

I state that the nomination of seats against the Central Pool does not require advertisement by the Central Government inasmuch as the information relating to nomination of seats against Central Pool is duly reflected in the prospectus issued by most of the Medical Colleges. The failure of any Medical College to bring to the notice of candidates the availability of seats in the Central Pool, cannot be attributed to the Central Government. It is the bounden duty and responsibility of the Medical College/Universities conducting the examination for the purposes of admission to the M.B.B.S. course to inform the candidates about the seats reserved for Government of India nominees. I also consider it proper to bring to the notice of this Hon"ble Court that in respect of some of the Universities the prospectus clearly contains a stipulation indicating that some seats would be reserved for Government of India nominees. For instance, the M.B.B.S./B.D.S. course of the Government Medical Colleges, Dental Colleges in the State of Gujarat, clearly state in paragraph 3 thus:

Ten seats shall be reserved for the Government of India nominees for admission to the first MBBS Course at the Government Medical Colleges and three seats should be reserved for admission for the first BDS course at the Government Dental College, Headband.

In the prospectus issued by the All India Institute of Medical Sciences, New Delhi, it has been stated that five seats are reserved for foreign nationals nominated by the Govt, of India.

In the Bulletin issued by the University of Delhi (Faculty of Medical Sciences), for 1985 session it has been clearly mentioned that there will be no entrance examination for Government nominees.

In the information bulletin issued by the professional Courses Entrance Examination Board M.P. Bhopal, it has been stated that the total number of seats reserved for the Government of India would be 30.

In the prospectus issued by the Mahatma Gandhi Institute of Medical Sciences, Seagram, Maharashtra, it has been mentioned that nomination for 4 seats can be

made by the Government of India.

In the prospectus issued for the year 1985-86 by St. Johns Medical College, Bangalore, it has been mentioned that one seat has been reserved for a nominee of the Government of India. Appendix-I to the prospectus gives relevant particulars of the various categories of students who can be nominated by the Government of India.

From the paragraphs quoted above it has rather been admitted that the State Government or the University concerned conducting examination should have published the fact that certain seats are to be filled up by nomination. It has been indicated that in many Universities this fact is mentioned in prospectus or otherwise. It has further been averred that Central Government could not be responsible for not doing so. It is not necessary to fix the responsibility here but the fact remains that what should have been done to make it known to all concerned that certain seats are open for nomination has not been done. We are, therefore, firm of the view that such information must be published in any manner thought fit by the State Government to bring it to the notice or to make the students concerned aware about filling up of seats by nomination against different categories. In this connection Sri Gopal Subramanian, learned Counsel for the Central Government, has stated that the Central Government has already issued necessary instructions requesting the State Governments to publish information henceforth, if they are not already doing so. He has also brought to our notice a case reported in 1983 (4) SC Cases 339 *Suman Gupta v. State of Jammu and Kashmir* wherein it has been held that nomination for admission to the reserve seats should not be arbitrary. Another case cited by him is 1984 (4) SCC 609, *Surendra Kumar v. State of Bihar*. In this case it was held that basis of nomination of certain candidates was not disclosed and the list of nominees prepared by the Chief Minister was arbitrary and without any basis and it was further held that it was blatant abuse of power by the Chief Minister. The list of nominees so arbitrarily prepared was quashed and a direction was issued to prepare a fresh list in order of merit. Judgment in the case of *Suman Gupta* (supra) was relied upon and referred to in this case. The learned Counsel for the Central Government has submitted that he has cited the above mentioned two cases to indicate that in the circumstances, as were found existing in the above two cases, nomination could be quashed but according to him in the present case that position is not there as there exists a policy formulated by the Central Government for nomination and further that he had placed relevant original record namely certificates of opposite party No. 6 to show that there was material before Central Government to act upon while making nomination of opposite party No. 6. There is little doubt, after looking into the cases referred to above that even in matter of nomination it is not an absolute discretion of the authorities concerned. It cannot be arbitrary and discriminatory. Nominations have to be in conformity with the provisions of Article 14 of the Constitution. We also hold, in that connection, all those who are concerned or could be interested in nominations have to be made aware about it. Such provisions for nomination

cannot be kept as a secret closed within the files of the Ministry concerned to be opened only for the benefit of a few having some special source of knowledge. On the ground mentioned above we would have normally quashed the nomination made by the Central Government but we refrain from doing so in this case. There are two persons who have been nominated by the Central Government in Moti Lal Nehru Medical College, Allahabad, against the category of sportsmen; one is opposite party No. 6 and the other is some Sri Vishwa Nath as informed by the learned Counsel for the Central Government but surprisingly the Petitioner has challenged the nomination of opposite party No. 6 alone. The other nominee is not before the Court, his nomination therefore cannot be quashed. It is not possible to quash the nomination partially when the ground for setting aside nomination is equally applicable to other nomination as well. Hon'ble Supreme Court had refused to set aside admission in similar situation in the case reported in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, . In the counter affidavit filed on behalf of the opposite party No. 6 it has been indicated that the Petitioner has challenged the nomination of opposite party No. 6 because of the fact that father of I the two parties namely the Petitioner and opposite party No. 6 are not " on good terms and father of opposite party No. 6 has supported the landlord of the house with whom father of the Petitioner has some litigation and _ the matter is pending in a writ petition in this Court. It has been submitted that it is due to this malaise that a prayer has been made for canceling the nomination of opposite party No. 6 and for admitting the Petitioner in her place so vacated. We are of the view that the Petitioner cannot pray for her admission by way of nomination on the seat of opposite party BO, 6 after canceling her nomination. In one of the rejoinder affidavit the Petitioner has only mentioned that she is also a sportswoman little indicating the material in support of that averment nor any such material has been placed during the course of the arguments. There is also no reason as to why the other person who has been nominated against the sports category, his nomination has not been challenged. Be as it may, it is not possible on the basis of the material on the record to record a finding that the nomination of opposite party No. 6 has been challenged with malaise intention. However, the fact remains that she has not challenged the nomination of the other person against sports quota. The other reason for not interfering with nomination of opposite party No. 6 is that the Central Government did have power to nominate which has been exercised on the basis of material before it in bonfire manner. The Petitioner, as mentioned earlier, has also qualified for being admitted on merit after it has been found that she is entitled for 4 marks each in questions No. 70 and 84 of Chemistry paper which brings her total to 841 marks whereas the last candidate admitted in M.B.B.S. course has obtained 835 marks. Yet another factor in saving her nomination is that she has already covered some good part of the 1st year course. On such consideration the nomination made for admission were refused to set aside in the case of Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, . In another case reported in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others,

which also relates to admissions in the Medical Colleges, their Lordships of the Supreme Court had disinclined to set aside the admissions already made for the reasons that the students who had already been admitted were pursuing their studies for quite some time and it was not proper to disturb the same and secondly as, pointed out earlier, the students who had already been admitted had not been impleaded as parties.

9. In the result the writ petition is partly allowed and the Petitioner shall be awarded 4 marks each in questions No. 70 and 84 of the Chemistry paper. The marks, which were omitted to be added in her Physics paper, shall also be added in the total. The Gorakhpur University shall revise the mark-sheet of the Petitioner within two weeks from today. By adding marks in the grand total of the Petitioner she would become entitled for admission in M.B.B.S. course. The State of Uttar Pradesh shall increase one seat on the same reasoning as given in our judgment delivered today in bunch of writ petition No. 5237 of 1985 and others and shall admit the Petitioner in tube M.B.B.S. course keeping in view the total marks received by her and her placing in the merit list according to which she may be found eligible to be admitted in any one of the State Medical Colleges in the next session which is to start in 1986.

10. Immediately after pronouncement of the judgment, learned Counsel for the Gorakhpur University orally prayed for grant of special leave to file appeal before the Hon''ble Supreme Court. We find that no substantial question of general importance is involved which may be needed to be decided by the Hon''ble Supreme Court.

11. The prayer made is rejected. Petition partly allowed.