

(1994) 12 MAD CK 0029

In the Madras High Court

Case No : Writ Petns. No's. 12517, 12791, 12768, 12789, 12949, 12978, 12517, 13679, 15005, 12779, 13788, 13788, 12959, 13545, 13748, 14248 and 22558 etc. etc. of 1994

S. R. Bhupeshkar adn

APPELLANT

Vs

Secretary, Selection Committee, Sabarmathi Hostel, Kilpauk,
Medical College Hostel Campus, Madras and Others

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

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

Evidence Act, 1872 — Section 115

Madras Hereditary Village Offices Act, 1895 — Section 6(1)

Citation : AIR 1995 Mad 383 : (1995) 2 LW 596 : (1995) WritLR 639

Hon'ble Judges : Srinivasan, J;Raju, J;Janarthanam, J

Bench : Full Bench

Advocate : S.V. Ramamurthy, A.S. Poobalasubramanian, R. Karuppan, V. Nicholas, V.N. Mohanraj, S. Silambanan for M/s. Nalini Chidambaram and V. Saichandravadhan;C. Prakasam, K.M. Vijayan, V. Ramajagadeesan, N. Ganapathy, G. Anbumani, V. Illanchezhiyan for M/s. C.M. Krishnakumar and S.P. Sankaran;K. Venkatasubbaraju, P. Gunaraj, T. Arulraj, R. Sankarasubbu for M/s. Chandrasekaran; T. Ramalingam, T. Muruganantham and S.N. Thangaraj, P.V. Bakthavatsalam, R. Balakrishnan and D. Rajasekar for M/s. M. Kandasamy, K.S. Radhakrishnan, L. Chandrakumar and S. Suriyanarayanan;V. Ramamurthy of M. Venkatachalapathy; M. Vairamani of M/s. Manickka K. Ramalingam and M.S. Suresh Kumar of M/s. M. Chinnachamy and P.V. Sanjeev of M/s. K. Venkatasubramaniam and B. Raveendran of M/s. Muthumani Doraisami, P. Wesley Issac and P. Muthukrishnan;Hajee P.K. Jamal Mohamed of M/s. P. Abboy and S. Ramanathan, C.S. Dhanasekaran ofM/s. D. Murugesan, v. Sanjeevi, S.M. H ameed Mohindeen, M.V. Venkateseshan, G. Ethirajulu ofM/s. S. Sundaresan, Lousy George, R.T. Doraisamy, S. Kumaran, K. Srinivasan, G. Prabhu Rajadurai and P. Jeevarthinam, C. Natarajan, N. Paul Vasamtha Kumar, S. Thiruvengadam, V. Sundar Anandan, R. Subramaniam, H. Rajasekar, B.S. Gannadesikan, J Nallathami Jothipandian and P. Anbarasan, S. Uthirasamy, K. Sridhar, N. Thiagarasan, S. Uthirasamy, K. Sridhar, N. Thiagarajan ofM/s. Chandran, Karuppiah and Ramani, P. Jyothimani, A. Muthukrishnan, R.S. Ramalingam, S. Periasamy, D.S. Rajendran, R.M. Krishnaraju, P. Seshadri ofN.S. Sivam, V. Sundararajan ofM/s. R. Murari and R. Geetha ofM/s. K. Jayaraman, M. Chandrasekaran ofM/s. T.N. Vallinayagam, K. thirumuruganandam and R.

Maheswari ofM/s. T.R. Rajaraman and N. Jawahar, V. Achuthan, S. Ashok Kumar R. Viduthalai, Damayantha Lakshmi ofM/s. S. Udayakumar and S.N. Rajkumar, Abdul Wahab, B. Chirstdas, D. Sivakumar, T. Ayyasamy ofM/s. G. Jeremiah and P. Krishnan ofM/s. P. Radhakrishnan and A. Chandrasekaran, K. Sukumaran, G. Nagarajan ofM/s. R. Vijayan and V. Srinivasababu ofM/s. S. Shanmugasundaram, R.G. Narendhiran, N. Rajavadivelu, D. Gurumurthy, N. Damodaran, K.P. Abraham, M. Kamalanathan, v. Rengapashyam, A.K. Mysamy, S. Sundharagopal. S. Duraisamy, B.R. Ramesh Babu, K. Veeraghavan, A. Sankara Subramanian, A. Muthukrishnan ofM/s. Kurian and Associates, N. Krishna Mitra, E. Padmanabahan, T. Srinivasaraghavan, I. Mahaboob Sheriff, S. Balasubramanian, A. Amalraj, T.M. Hariharan, A.K. Sridharan, C. Selvaraju, A.G.M. Bhaimia, V.P. Nagarajan, A. Fathimanathan, V. Parthiban, G.K. Selvarajan, R. Thamaraiselvan, S. Muthuramalingam, M.S. Umapathy, A. Selvaraj, V. Karthic, V.K. Vijayaraghavan, N.C. Ramesh, S. Krishnasamy, N. Kannan, R. Thirugnanam, P. Vijayakumar, T.P. Kathiravan, R. Singaravelu, T.S. Sivagnanam, K. Ravinchandrababu, D. Nellaippan, P. Karunakaran, S.M. Subramanian, V. Srinivasan ofM/s. C. Nelson and Thenkodi Nelson, P. Mathivanan, S. Sadasharam, K. Elango, V. Subramani, M.AM. Azeezur Rahman, S. Subbiah, P. Selvaraj, R. Gopalakrishnan, S.Y. Raghuraman, K.R. Thiagrajan, P. Mani, M. Vaidyanathan, Sarvabhauman Associates, A. Arulmozhi, G. Rajagopalan, G. Karthikeyan, B. Krishnaveni, S. Mohan Das, John Sundarlal Suresh, G. Thangapandian, C.S. Palaniappan, P.E. Venkataraman, P. Rajendra, R.N. Kothandaraman, B. Ram Mohan, A.K. Kumaraswamy ofM/s. Vasudevan and Priya, K. Jegannadha Rao of M/s. J.R.K. Bhavanatham and P.B. Ramanujam, M.V. Chandran, P. Dharmaraj, C. Gurulingam of M/s. L. Vijayan, B. Kalarani, K. Mahendran, R. Antony Xavier, V. Raghavachari, Venkatasubbaraju, M. Doraisamy, D. Bright Joseph, S. Natarajan, C. Pandian, M. Sekar, V. Ravi, P.K. Ramkumar, K.A. Basheer Ahamed, B. Thanikachalm, M. Jaichandran, C. Raghunatha Reddy, P. Rathinadurai, V. Selvaraj, t. Murugamanickam, C.M. Krishnakumar ofM/s. Smity and Bagley, S. Manjula, B. Sivakumar, T. Mohan, D. Chakravarthi, P.M. Subramaniam, A. Sivaji, T. Vadivelu ofM/s. R. Vijayalakshmi and P.S. Baskar, P.A. Daivasigamani and Associates, Mohan Parasaram, P. Sivaprakash, Sathiamurthi, S. Rajkumar, M.S. Sundararajan, T. Gopalakrishnan, S. Venkateswaran, B. Neduchezhiyan, N. Kannadasan, J. Krishnamachari, S.J. Jagadev ofM/s. Chairman Selvaraj and R. Kamaraj, R. Suresh Kumar, J. Mahalingam, K.R. Krishnan, D. Suresh, v. Perumal, M. Mubarak Ahmed, G. Devadoss, A. Kot5handaraman, V.R. Gopalan, P. pandithurai, S. Sathichandran, P.S. Seetharaman, P. Thamizkumaran and S. Thirumavalvan, M. Prakash Kumar, P. Annal and P. Sivaprakash, P.K. Gopal Raj, G. Thilakavathi, T.R.K. Kumara Singh, Mahmud Sheriff ofM/s. Thankaswamy and R. Israd, Amirtharaj, S.V. Pandiarajan, Lakshmi Priya Associates, Sukantharaj, M. Muthappan, S.M. Abdul Wahab, R. Thenmozhi, M.R. Raghavan, V. Kunchithapatham, Irwin Aaorn, R. Krishnamoorthi, R. Muthukumaraswamy, Special Government Pleader on behalf of Tamil Nadu and of S. Subbiah for M./s. Row and Reddy on behalf of Anna University, for the Appellant;

Judgement

Srinivasan, J.—This batch of ""sea-sional writ petitions"" if we may say so, challenges the selection of students for the professional courses in

the year 1994-95. Thanks to the spasmodic brain waves of the persons in charge of education in the State, higher education has become a fertile

breeding ground for litigation. Aspirants for higher studies with dreams of a bright prosperous future are made to undertake a pilgrimage to the temple of justice with prayers to fulfil their desires. It was only four years ago, the State Government attempted to introduce a system of awarding five bonus marks to applicants for professional courses if they happened to be the first in their families to apply for such admission and there was no single graduate among the members of their families on the day of the application. This Court had no (to) strike down the G.O. as unconstitutional. This year, the Government decided to shower their blessings on sportsmen at all levels by generously awarding grace marks to be added to the marks obtained in the qualifying examinations and issued G.O.Ms. 118 dated 21-2-1994. That is the prime cause of action for these writ petitions. Fifteen of them relate to B.D.S. course and twenty one relate to Engineering course. All the other petitions pertain to M.B.B.S. course.

2. These petitions were heard at length by a Division Bench comprising one of us (Raju, J.), and Lakshmanan, J. By order dated 15-11-1994 they referred the matters to a Full Bench on the following reasoning :--

14) After careful consideration of all these we are of the view that these writ petitions deserve as also are required to be considered by a larger

Bench than a Division Bench. Some of the issues particularly one relating to the reservation in excess of 50% the validity of T. N. Act 45/94 and

the applicability of reservation policy to Payment Seats, involve substantial questions of law relating to the interpretation of the provisions of the

Constitution and are of great general and public importance. Further, we find that some of the issues though have been raised and answered on

more than one occasion by various Benches (single, as well as Division Benches) relentlessly the same points are raised once over again every year

in respect of some selection or the other for admission to professional courses, under the pretext of seeking reconsideration of such earlier rulings

even de hors any justification or for any substantial reasons, taking advantage merely of the fact that these issues have been earlier adjudicated by

single or Division Benches of this Court. To give a quietus to all these and to have an effective and final adjudication of some of these often

recurring important and vital questions of law, we consider it appropriate and

necessary that these writ petitions shall be placed before a larger

Bench than a Divisional Bench to hear and dispose of these cases and decide such issues.

3. By the time, the matters were posted before us, the State Government announced that in the matter of reservation, the directions issued by the

Supreme Court of India for this year were complied with fully. Therefore, it is agreed by all parties that the question of reservation need not be

decided in these cases. The remaining questions which are considered by us are :

(A)(i) Has any candidate been selected by implementing G.O.Ms. 118 dated 21-2-1994?

(ii) Is the withdrawal of the G.O. by the Government illegal and arbitrary?

(B) Has any fraud been played in the guise of retotaling the marks awarded in the qualifying examinations?

(C) Should the marks awarded in the qualifying examinations be totally ignored and fresh selection be directed on the basis of marks awarded in

the entrance examination?

(D) Has there been any fraud in the valuation of answer scripts in the entrance examination?

(E) Is the method of selection contrary to clause 8.2(a) of the Prospectus issued by the Directorate of Medical Education?

(F) Is the reservation provided in clause 3.5 of the Prospectus for special categories in Government colleges violative of Articles 14 and 15 of the

Constitution of India?

(G) Is the allotment of seats in Perundurai Medical College to the wards of employees of the Transport Corporation illegal?

(H) Miscellaneous questions arising in some individual cases.

4. The Chronology of events which has naturally given rise to a suspicion that several candidates have been surreptitiously admitted on the basis of

grace marks awarded by the Sports Development Authority in pursuance of the G.O. is as follows :--

5. Before the passing of G.O. Ms. No. 586 on 15-7-1994 making G.O.Ms. No. 118 dated 21-2-1994 inapplicable to professional colleges for

the academic year 1994-95, as public interest litigation was launched in W,P. No. 11774 of 1994 challenging the validity of G.O. Ms. No. 118.

After the passing of the later G.O. on 15-7-1994, that writ petition was dismissed as infructuous on 21-7-1994.

6. Soon after the publication of results on 18-7-1994, most of these writ petitions came to be filed before the end of July 1994. Petitions for

contempt were filed in the Supreme Court of India, for punishing the respondents for disobeying the directions given by that court earlier that

reservations for Backward Classes, etc., should not exceed 50%. The Supreme Court gave certain directions and passed certain orders on 1-8-

1994, 9-8-1994 and 10-8-1994. In pursuance of one such direction a list was published on 3-8-1994 indicating the marks obtained by the

Selected Candidates in brackets. In the last order dated 10-8-1994 the Supreme Court referred to the fact that in the open category of 300

selected candidates, candidates belonging to Backward Classes, Most Backward Classes and Scheduled Castes are 213, 29 and 2 respectively

and the candidates not belonging to any of the Social Reservation categories who got admission in the merit quota are only 56 against a total of

970 seats. The court proceeded to work out the number of candidates who would have got admitted if the reservation had been confined to 50%

and arrived at a figure of 62 in all. The Court did not want to disturb the selection already made and directed the State Government to create 52

extra seats in the Government Medical Colleges and after adding the same to 10 seats available in Ramachandra Medical College, admit 62

candidates on the basis of merit excluding those already admitted under one or other reserved category. By a subsequent order the Supreme Court

clarified that 26 out of 62 seats could be allotted to candidates belonging to Backward Classes on the basis of merit and the remaining 36 to

candidates belonging to classes for which there is no reservation. By the time, the matter came up before us for arguments the State Government

announced their decision to comply with the said directions of the Supreme Court and we were informed by the learned Advocate General that the

list of 62 candidates had been filed in that court and accepted by the court. A copy of the list was also filed before us and the same was published

in News papers during the hearing before us. Some of the writ petitioners found that they have been selected as per that list and reported that their

writ petitions had become infructuous. Accordingly, we dismissed about sixteen writ petitions as infructuous by separate orders.

7, Eighteen advocates including some senior advocates argued on behalf of the petitioners in detail and the other adopted their arguments. While

the Advocate General replied on behalf of the State Government and the authorities, the Anna University was represented by its own counsel

separately. During the course of arguments a request for adjournment was made on behalf of Mr. R. Karuppan appearing for the petitioners in

some of the writ petitions challenging the validity of G.O. Ms. No. 586 of dated 15-7-1994 by his Junior Mr. G. Nanmaran who is also on record.

When we expressed our inability to grant adjournment pointing out that when a batch of cases is being heard by a Full Bench specially constituted

after fixing a date for hearing, it is not possible to adjourn some matters at the instance of one or other counsel. Mr. Nanmaran said that he left the

matter to court to be decided on merits. In spite of the said representation, we gave an opportunity to Mr. Karuppan to argue his cases after the

counsel for the respondents concluded their arguments and the petitioner's counsel were replying. But Mr. Karuppan after arguing for about fifteen

minutes requested for an adjournment to the next day on the ground that he would present his case in a concise form in about ten or fifteen minutes.

We could not agree. We, however, showed an indulgence to him by permitting to file ""Written Submissions"" on the next day i.e., 9-12-1994. But

Mr. Karuppan did not file his ""Written Submissions"" till the after-noon of 14-12-1994 long after the expiry of the time given by us. Yet in order to

render justice to the party concerned we have chosen to ignore the delay and peruse the written arguments. We will refer to them at the

appropriate place. We will now proceed to advert to the contentions of parties on merits. We will discuss seriatim the questions set out earlier.

A (i) G.O.Ms. 118, dated 21-2-1994.

8. Now that the G.O. is withdrawn in respect of professional colleges for this year, the contention is that there is no real withdrawal as a fact and

G.O.Ms. 586 dated 15-7-1994 is only a camouflage to hoodwink the public. According to them more than 300 candidates have been admitted on

the basis of grace marks awarded in pursuance of the G.O. It is submitted that though the G.O. was passed on 21-2-1994, guidelines are

prescribed in Letter No. 24793/Y1/94-3 dated 8-6-1994 by the Secretary to the Government, Education Department for implementing the G.O.

The method of calculating the grace marks to be added was also set out. Paras (i) and (ii) of the said letter read thus :--

(1) The Member Secretary, Sports Development Authority of Tamil Nadu will issue notification calling for applications from eligible students who

are proficient in sports games for awarding of grace marks as per G.O.Ms. No. 118, Education, Science and Technology Department, dated 21-

2-1994. The Sports Development Authority of Tamil Nadu will scrutinise the applications and certify such students who will be eligible under this

Scheme as outlined in the above mentioned G.O.A. copy of the list of candidates will be sent to all admitting agencies.

(ii) The grace marks awarded in the Government Order will be added equally to all the subjects concerned in the Public Examination along with the

marks scored by the Students and the grand total may be entered in the mark certificates. For instance, for National level Winner, 15% of the

aggregate marks have to be added. In S.S.L.C. Public examination out of 500 marks, a national level winner will get 75 additional marks which

will be added in each of the five subjects at the rate of 15 marks each. In case of Higher Secondary Examinations, a National Level winner will get

180 grace marks which will be added in each of the six subjects at the rate of 30 marks each.

Thereupon the Member Secretary. Sports Development Authority of Tamil Nadu issued Lr. No. 51406/C1/93 dated 14-6-1994 to all Assistant

Directors, all District Sports Officers and Wardens of Sports/Schools/ Sports Hostels requesting them to give wide publicity to G.O.Ms. 118 and

instruct the eligible sports persons to contact Head Office immediately with the Original Sports Certificates and mark lists.

9. That was followed by a letter dated 6-7-1994 from Secretary to Government, Education to The Director of Government Examinations under

letter No. 40138/Vi/94-1. Specific directions were issued in the following words :--

2. The questions of issuing revised mark sheets after adding the grace marks by the Director of Government Examinations was examined and it

has been decided that for the award of grace marks it should be certified by the Member-Secretary, Sports Development Authority of Tamil Nadu

after verification of the Sports Certificate of the Students. Revised marks sheet should be issued by the Director of Government Examination based

on the Certificate issued by the Member--Secretary, Sports Development Authority of Tamil Nadu along with the marks already secured in the written examination.

3. Accordingly, the Government direct that on the strength of the certificate issued by the Member-Secretary, Sports Development Authority of

Tamil Nadu in respect of grace marks awarded for sports, a revised mark sheet be issued by the Director of Government Examination after adding

the marks awarded for sports along with the marks already secured in the written examination.

Pursuant to the said instructions, the Member-Secretary, Sports Development Authority of Tamil Nadu issued certificates to the students governed

by the G.O. According to the Petitioners the Authority issued 1500 such certificates.

10. The petitioners have also produced a specimen copy of a letter bearing dated 7-7-1994 in R.C.I No. 514/C1/93 from the Member-Secretary,

Sports Development Authority to the candidates individually informing them that a revised Mark Certificate adding the Grace Marks for

proficiency in Sports with the marks obtained by him/her in Public Examination will be issued by the Department of Government Examinations and

he/she should surrender in person the original Marks Certificate already issued by the Department of Government Examinations and the Certificate

issued by the Sports Development Authority of Tamil Nadu to the Secretary to the Director of Government Examinations for obtaining revised

Mark Certificate. The candidate is requested to contact the Secretary to the Director of Government Examinations on or after 20-7-1994.

According to the petitioners, Certificates had been issued by the Secretary to the Director of Government Examinations adding up the marks

obtained in Public Examination and the Grace marks awarded as per the G.O. It is the contention of the petitioners that it is not possible from the

revised Mark Sheets issued by the Director of Government Examinations to ascertain the marks obtained in the Public Examination Originally by

the candidate, as the break-up figures are not set out. Thus, according to the petitioners, a large number of candidates made use of the revised

Mark Certificates and secured admission to the M.B.B.S. and B.D.S. Course.

11. In the counter-affidavit filed by the Sports Development Authority it is stated

that there were about 2757 applications received up to 15-7-1994 from the students seeking Grace Marks and out of them 630 pertained to Professional Courses. It is further averred that on 12-7-1994 communications were sent by the Authority to 52 candidates who had applied for grace marks on 7-7-1994 and obtained certificates directing them to obtain a revised mark certificate from the Director of Government Examinations after surrendering the Original Mark sheets issued by the Authority. It is stated that on 13-7-1994 he received a message from Directorate of Government Examination requesting not to send the particulars of candidates to get the revised mark sheets subsequently. A further communication is stated to have been issued to all the 52 candidates directing them not to approach the Director of Government Examinations to get revised Mark Sheets and the said fact was informed to the Deputy Secretary to the Government, Education Department on 13-7-1994.

12. In the common counter affidavit filed on behalf of the Director of Government Examinations it is stated that the Higher Secondary Examination is conducted under the scheme for the award of the Higher Secondary course certificates issued in G.O.Ms. No. 2176, Education (VI) dated 30-9-1981 and as per the scheme, the Board of Higher Secondary Examination constituted by the Government shall award the certificates. The Board has got its own Directors and Chairman and the functions of the Board have been set out under the scheme. Chapter IX of the Scheme gives the award of Certificates. Clause (a)(3) provides that the Mark Certificate shall indicate the subjects appeared and the marks obtained. It is, therefore, averred that the award of Higher Secondary Certificates being in pursuance of a scheme, there is no scope for any other marks being added in the certificates. According to the counter affidavit, the Higher Secondary results for March 1994 Examination were published on 25-5-1994 and the Certificates were issued to the students on 26-5-1994 through their schools and Mark Certificates for Private candidates were issued on 30-5-1994 and 31-5-1994 through Distribution Centres. The Mark Sheets received from Valuation Centres were directly fed into the Computer in the Government Data Centre. Thereafter, the Certificates were sealed and despatched to the schools and Centres. Immediately on receipt of the letter dated 6-7-1994, the Director of Government Examinations

had a meeting on the same day with the Secretary to the Government, Education along with the Additional Secretary and had a discussion and brought to their notice the provisions of the scheme. The deponent was instructed in the meeting not to give effect to the letter dated 6-7-1994. Accordingly, the Director of Government Examinations did not issue any revised Higher Secondary Certificate by adding sports Grace Marks. By letter dated 29-7-1994 the Director informed the Secretary to Government that the Board had not issued any Higher Secondary Course Certificate after adding the Grace Marks awarded for Sports to any candidate who appeared in the March, 1994 Examination.

13. Commenting upon the said affidavit, learned Senior Counsel for the petitioners submitted that there was no explanation as to the inordinate

delay in sending the communication alleged to have been sent on 29-7-1994. Our attention was drawn to a letter in Letter No. 55528/Y1/94-1

dated 6th Sept. 1994 from Secretary to Government to the Director of Government Examinations. In that letter reference is made only to G.O.Ms.

No. 118 and Government letter No. 40138/Y1/94-1. There is no reference whatever to the communication in Re. Number 51406/C1/93 dated

7-7-1994 issued by the Member-Secretary, Sports Development Authority or G.O. Ms. No. 586 dated 15-7-1994. Nor is there any reference

to the letter dated 29-7-1994 alleged to have been sent by the Director of Government Examinations to the Secretary to the Government. The

letter reads as if the addressee is informed for the first time by the signatory about the meeting held on the after-noon of 6-7-1994 and the decision

taken therein not to give effect to the directions issued in the Government Letter dated 6-7-1994. In the last paragraph of the letter, the addressee

is informed that the directions issued in the Government letter dated 6-7-1994 shall be treated as withdrawn.

14. Undoubtedly, there is considerable force in the submissions made by learned Senior Counsel for that the above circumstances create a strong

suspicion that that the Authorities are not acting bona fide. Learned Senior Counsel put it "picturesquely", "the door was opened, some (ineligible)

people were let in and the door was closed". In that background, we started to scrutinise minutely all the records to ascertain whether the

respondents are speaking the truth when they claim that not even a single

certificate has been issued by the Director of Government Examinations adding the Grace Marks for Sports. One of us (Raju, J.), who was a party to the Division Bench which referred to the matter to the Full Bench, went through all the applications and the Mark Sheets of all the selected candidates. In addition to that, we sat in open Court and scrutinised the papers on a random sample basis. We invited the Advocates appearing in those cases to pick out the papers of any candidate from out of the selected candidates. We directed the respondents to place the relevant records of all the 970 selected candidates on the table. Advocates packed out four out of every 100 applications. In all 40 such applications were handed over to us for thorough scrutiny. In addition thereto, one of the advocates mentioned specifically the Register Numbers of two candidates, whose papers were also taken out and checked up.

15. In the common counter affidavit filed by the Secretary, Selection Committee, it has been stated that out of 17,000 applications received from

M.B.B.S. Course 244 candidates claimed the benefit of Grace Marks for Sports. All of them had enclosed the Certificate issued by the Sports

Development Authority awarding grace marks. While scrutinising the said 244 applications, grace marks were not taken into account. 24 of them

were selected on the basis of their marks obtained in the Public Examination, as they had secured more than the required cut off marks. However,

by an inadvertent mistake, eight candidates were selected on the basis of grace Marks and intimation letters were also sent to them. But, the

admitting Agencies had been instructed to scrutinise the papers and identify those who have been wrongly selected and not to admit such

candidates whose Grace Marks had been taken into account. Thus, the erroneous selection of eight candidates was discovered and they were not

admitted in the Colleges. When we scrutinised the records of 40 candidates as stated above, we scrutinised also the records of the aforesaid 32

candidates, 24 of whom were selected on the basis of their academic marks and eight were wrongly selected on the basis of grace marks. We

found that the statement contained in the Common Counter Affidavit file by the Secretary, Selection Committee is correct, excepting one or two

small errors in Annexure II filed therewith. In Annexure II, Serial Number 2 is stated to be P. Raja Rajeswari with Entrance Examination Number

432406. She was not a person who claimed the benefit of the Grace Marks. That name is wrongly given as one of the 24 persons who claimed the

benefit of Grace Marks; but selected on the basis of academic marks. Instead the person who was so selected is Kalaimaran, whose Entrance

Examination Number is 233779. We have found that he has secured the requisite marks in the qualifying examinations as well as the Entrance

Examination, so as to make him eligible for selection. We have found that he belongs to Most Backward Community and he has secured 182

Marks in Physics, 198 Marks in Chemistry and 193 Marks in Biology out of 200 each, without including the Grace Marks. He has also secured

91.7% in the Entrance Examination. Thus, he has obtained 283.20, whereas the cut off marks for MBC as on 18-7-1994 were 281.05 and as on

4-12-1994-281. Thus, he has been rightly selected on the basis of his academic merit. Serial No. 24 is M.S. Priya, who is a member of S.C.

Community. According to Annexure, she has secured 264.65 excluding the grace marks. The cut off marks for M.B.B.S. as on 18-7-1994 for

S.C. was 266.90 and as on 4-12-1994 266.15. But, the cut off mark of B.D.S. Course as on 18-7-1994 was 264.90. Thus she was not eligible

for admission either to M.B.B.S. or B.D.S. Course. But, she has been admitted in Savitha Dental College, Madras, as per the Annexure. We

directed the respondents to explain how she was selected and admitted. Though the respondents submitted that it was a mistake at the time, they

proceeded to point out that the cut off marks for S.C. as on 9-12-1994 when we were hearing the writ petitions had come down to 261 and they

also made a Statement that 27 candidates have been selected after M.S. Priya upto the present cut off mark of 261. Hence, the Selection of M.S.

Priya cannot be disturbed. But for the above errors, the particulars given in Annexure II are, found by us to be correct.

16. We found that there is not even one Certificate issued by the Director of Government Examination after adding the Grace Marks for Sports.

All the candidates who have claimed the benefit of Grace Marks had enclosed with their applications the Certificates issued by the Sports

Development Authority. Such Certificates not only mentioned clearly the marks obtained by them in the public Examination, but also the Grace

Marks to be awarded for each subject separately. On a perusal of such certificates, anyone can find out the marks scored by the candidates in the

Public Examination Originally and the Grace Marks. The candidates who secured admission on the basis of the Grace Marks had themselves added up the marks and shown the totals in their applications, which led to the mistake on the part of the authorities. We also cross-checked the marks in the Original Certificates with the Tabulated Mark Registers containing the details of Marks obtained by each candidate in the Public Examination with all the relevant particulars. We found that the marks entered in the Tabulated Mark Registers through the computer in the Government Data Centre are only the marks obtained in the Public Examinations. They do not include and could not have included the Grace Marks awarded by the Sports Development authority, because the award of grace marks and entering the same in the Certificates could have been done only after 8-6-1994, whereas, the Mark Sheets containing the marks obtained by the candidates in the Public Examination were distributed to the candidates by the end of May 1994. It is also seen from the Tabulated Mark Registers that whenever the Marks of a candidate are revised on account of retotalling, they are entered specifically in red ink in the said register. It is also seen that in cases where the candidates secured higher marks on retotalling, the entries in the Marks Sheets issued to such candidates are written in hand, whereas the Original Mark Sheets issued in May 1994, immediately after the publication of results, are computerised Mark Sheets.

17. Apart from the Tabulated Mark Registers, the Anna University, which has conducted the Entrance Examinations, has prepared computerised

Statements containing the marks obtained by the candidates in the relevant subjects in the Public Examinations, the aggregate thereof to the base of

200 as well as the marks obtained in the Entrance Examination and the total thereof. The said statement gives particulars of Serial Number,

Registration Number, Name of the Candidate, Community, Marks in Physics, Chemistry and Biology individually and the aggregate thereof to the

base of 200, Entrance Examination Marks and the total. The correctness of the said statement has also been cross-checked with the particulars

given by the candidates themselves in the applications for Entrance Examination. We are satisfied that the allegation made by the Petitioners that

Grace Marks awarded for Sports have been taken into account for admitting a large number of candidates is not correct, though there was some

room for suspicion.

18. We also found that the specific allegation contained in some of the affidavits with regard to particular candidates that they have been selected

on the basis of Grace Marks is not correct. For example, in W.P. No. 12978 of 1994 it is alleged in paragraph 6 of the affidavit that one Amulyan

with Registration Number 222423 and one Manimaran with Registration Number 233417 have been selected by virtue of their grace marks

awarded for Sports. This averment is absolutely wrong as the said Amulyan has himself filed W.P. No. 12959 of 1994, which is item No. 337 in

the cause list, making a grievance against the withdrawal of the G.O. Similarly, the said Manimaran has filed W.P. 13354 of 1994, which is item

470 in the cause List complaining against his non-Selection.

19. The Petitioners' Counsel pointed out certain discrepancy between the selection lists published on 18-7-1994 and 3-8-1994. It is submitted

that the List published on 18-7-1994 contained 970 numbers while the later list contained 979 numbers. This is explained by the learned Advocate

General as follows :-- The list of 18-7-1994 included the numbers of eight candidates who were wrongly selected on the basis of Sports Grace

Marks and the selection was later cancelled. Similarly, it included the numbers of three other candidates who were wrongly selected because of

wrong print out of the Mark Sheets. One candidate, who was under-aged was wrongly selected. Thus, out of 970, 12 were wrongly selected. The

balance is 958. That list omitted to include 21 candidates who had secured marks higher than the cut-off marks. They were included in the second

list. Thus, the total became 979. The learned Advocate General also submitted that 19 of them did not join and only 960 joined the course. 11

more candidates were selected and the total became 971. Thus, according to the Advocate General, the total of selected candidates is only 971,

excluding the 62 candidates directed to be admitted by the Supreme Court. We have no reason to reject the said explanation of the learned

Advocate General.

20. The Petitioners have submitted two lists, one list containing the numbers present in the first selection list but absent in the second list and

another list containing the numbers present in Second selection list but absent in the first selection list. The first list contains 28 numbers whereas the

second list contains 21 numbers. The respondents have filed annexures explaining the discrepancies. Annexure I corresponds to the first list filed by the Petitioners and Annexure II corresponds to the second list. It is pointed out by learned Advocate General that numbers 1 to 15 and 27 in

Annexure I are found in Annexure II also, Nos. 16 to 20 and 26 were selected on the basis of grace marks, but their selection was later cancelled.

Hence, their numbers will not be found in Annexure II. Numbers 21 to 23 were selected because of the wrong prim-out of the marks and their

selection was, therefore, cancelled. Numbers 24, 25 and 28 do not come under either of the Selection Lists. Hence, there is no discrepancy. Here

again we find that the explanation offered by the respondents is acceptable. It is also contended by the petitioners that there is discrepancy in the

particulars given regarding the number of applications for awarding grace marks. In the affidavit of the Member-Secretary, Sports Development

Authority, Tamil Nadu, filed on 19th August, 1994 it is stated that about 2757 applications were received upto 15-7-1994 from students seeking

grace marks and of them, 630 applications pertained to professional Courses. In the common counter affidavit filed by the Secretary to the

Selection Committee on 24th August, 1994, it is averred in paragraph 4 that 244 candidates applied for admission to M.B.B.S. Course claiming

grace marks as their eligibility marks along with the academic marks. In the counter affidavit filed by the Director of Technical Education on 23-8-

1994, it is stated in paragraph 4 that 466 candidates applied for admission in Engineering Colleges claiming the Grace Marks along with the

academic marks. It is argued that the total, according to the affidavits of the Secretary, Selection Committee and the Director of Technical

Education comes to 710 (244 + 466), whereas the Member-Secretary, Sports Development Authority has referred to only 630 applications for-

marks for professional Courses. It is sought to be explained by the respondents in the Additional Counter Affidavit filed by the Joint Secretary to

the Government, Health and Family Welfare Department, on 2-9-1994. In paragraph 7 of the said affidavit, it is stated that Professional Courses

will include Medical, Para-Medical, Engineering, Polytechnic, Veterinary and Agriculture etc., and all the applicants who have applied for grace

marks need not necessarily apply for the professional Courses. It is further stated that depending on the marks secured, eligibility and their interest,

there were 244 candidates for M.B.B.S. Course claiming grace marks and 466 candidates claiming grace marks for Engineering Course. The

Counter affidavit states that therefore there is no discrepancy in the number of applicants to the professional courses claiming sports marks. No

doubt, the wording of the additional Counter affidavit is confusing and the matter is not clarified thereby. But, the learned Advocate General has

correctly explained by pointing out that the same persons could apply not only to Medical Courses but also to Engineering Courses. Thus, the total

mentioned by the Sports Development Authority as 630 is correct, as many of them might have applied for both Engineering and Medical Courses.

The correct number of applicants for grace marks before the Sports Development Authority cannot be ascertained by adding the number of

applications for Medical Courses and the number of applications for Engineering Courses for which the benefit of Grace Marks had been claimed,

as there has been overlapping as indicated above. We accept the said explanation and hold that there is no material discrepancy whatever in the

particulars furnished by the various authorities.

21. Hence, we answer Question A(i) in the negative.

A(ii). Withdrawal OF G. O. MS. No. 118 Dated 21-2-1994.

22. In five of the Writ Petitions viz., W.P. Nos. 12779, 12780, 12959, 14816 and 15820 of 1994 the withdrawal of G.O.Ms. No. 118 is

challenged. The Petitioner in W.P. No. 12959 of 1994 is one of the eight candidates wrongly selected on the basis of Sports Grace Marks and the

mistake was discovered before admission. The Petitioner was informed of the Selection and her number is also found in the list published on 18-7-

1994. But, she was not admitted. But, when she approached the Dean of the Madras Medical College for admission, the college refused to admit

her and informed her that her selection was erroneous, as the grace marks had been taken into account. Hence, she has prayed for issue of a

Mandamus directing the respondents to admit her in the First Year M.B.B.S. Course in the Madras Medical College or in any other Medical

College, pursuant to the Selection already made. When the Writ Petition was being heard, learned Counsel for the Petitioner represented that after

the selection of 62 candidates as per the direction of the Supreme Court, his client has been offered a payment Seat. But, he would argue the

matter as she would be entitled to a free seat, if his contention is accepted. In the other four matters, the Petitioners were not selected. Though the prayers are differently worded, the claim is that G.O.Ms. No. 586 dated 15-7-1994 is unconstitutional and arbitrary. The contentions of the Petitioners are that the G.O. is arbitrary as it is withdrawing G.O.Ms. No. 118 partially with reference to professional Colleges only. According to learned counsel, it is violative of Article 14 of the Constitution of India. It is contended that there cannot be a classification between Professional and non-Professional Colleges, as the same will have no nexus with the object of G.O.Ms. No. 118. According to them, the purpose of G.O.Ms. No. 118 is to encourage outstanding sports talented students, as they will be losing several hours of study when they are engaged in sports. In the Written arguments submitted by Mr. Karuppan, to which we have made a reference already, it is stated that the beneficial treatment to the sportsmen would improve the standard of sports and games and will lead the country-man in the international scene thereby enabling the country to emerge as one of the super-powers of the world. It is averred that the sports and games will serve the purpose of bringing forth peace and friendship in the international scene and enable the intergration of human race on the whole and doing away with the fissiparous tendency prevalent as on date. Excellence in Sports and Games will improve the status, prestige and glory of the country in the international scene and as well win the good-will of the human race. Therefore, the move to encourage sports and games is to be appreciated and welcomed. According to the said written argument, in the non-Professional colleges, several candidates have got admissions to higher courses of study with the help of the grace marks and even students who have failed in the academic examinations have secured pass marks with the aid of grace marks for sports and joined higher courses. It is contended that the discrimination made between non-professional colleges and professional colleges is, therefore, unconstitutional. It is also argued that the doctrine of legitimate expectation would apply in this case and after having invited the candidates who are proficient in sports to avail of the benefits of G.O.Ms. No. 118, they have been legitimately expecting to get admission to the professional courses and it is unjust on the part of the Government to withdraw suddenly before the publication of the Selection list the G.O. with reference to

Professional Colleges. Yet another argument advanced on behalf of the Petitioners is that the Principle of promissory estoppel would come into play preventing the Government from denying admission to the Petitioners. Learned counsel for the Petitioner in W.P. No. 12959 of 1994 has made an additional submission that the Principles of natural justice are violated as no notice had been given to the Petitioner before the cancellation of the Selection.

23. In support of the contentions, the Petitioners have invited our attention to the observations contained in the Judgment of a Division Bench of

this Court dated 6-4-1984 in P. Sabitha v. The Director of Medical Education, Madras (W.P. No. 9406 of 1983 etc. Bench). In that case, some

of the Petitioners before the Bench contended that they should have been selected in the quota of seats reserved for eminent sportsmen and while

doing so, assailed the selection of three candidates in that category who, according to them, had secured lesser marks than themselves. It was for

the first time in that year concession was given to eminent sportsmen, after the results of the qualifying examinations were published. It was argued

that in order to facilitate a particular candidate to apply for admission in the category of eminent sportsmen, the Government had lowered down the

level of academic marks for such sportsmen to apply for admission. The learned Advocate General had argued in that case that the three seats

were reserved for eminent sportsmen and it was only the eminence attained in field of sports, which could be the guiding factor for selection of

candidates in that category and nothing else. The Bench accepted the contentions of the Writ Petitioners and observed that 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 and that the candidate will have to sacrifice a good portion of his study time for attaining eminence in sports activities.

The Bench observed that it was to offset the sacrifice made by the candidate of his academic activities, the Government had deemed it fit to

prescribe lesser marks of eligibility for applying for M.B.B.S. Course. The Bench said :--

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..... 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.

The reasoning of the Bench cannot be torn out of its context and applied in the present case. The Bench was concerned with the reservation of

three seats only for eminent sportsmen. The said reservation of three seats for sportsmen still continues and in addition thereto, the Government has

attempted this year to introduce award of grace marks to sportsmen by G.O.Ms. 118. The validity of the G.O. has not been challenged in these

Petitions in view of the fact that it has been made inapplicable to professional colleges by G.O. Ms. No. 586. When a question was put to counsel

appearing for the Petitioners as to whether they could justify the passing of G.O.Ms. No. 118. they could not answer the same. They were only

concerned with their attack against G.O.Ms. No. 586. But, before considering the arguments against the validity of G.O.Ms. 586 it is necessary to

advert to some relevant facts.

24. In G.O.Ms.No. 118 dated 21-2-1994, reference is made to the resolution passed on 10-7-1993 by the Sports Development Authority of

Tamil Nadu that in order to encourage outstanding sports talented students, grace marks for meritorious sports person at school Level based on

their performance at International/Nation/State Level. Subsequent thereto, the Member-Secretary, Sports Development Authority, submitted a

proposal to the Government which was accepted by the Government. The Government accordingly directed award of grace marks as follows :--

25. Though the G.O. was passed on 21-2-1994, the Government had not taken any steps to implement the same by framing appropriate

guidelines and issuing directions to the concerned Authorities. The qualifying examinations were all completed in March-April, 1994 and the results

were also announced on 25-5-1994. The marks were issued to the students on 26-5-1994. The last date for submitting applications for the

Entrance Examination for Professional Courses was 3-6-1994 and till then nothing had been done by the Government to implement the G.O. The

Government passed G.O.Ms. No. 443, Health and Family Welfare Department dated 9-6-1994 issuing orders regarding the policy and

procedure etc., for admission to I year M.B. B.S., B.D.S./B.Pharmacy/B.Sc.,

(Nursing) and Bachelor of Physiotherapy Courses, 1994-95

session. In that G.O., there is no Whisper about the grace marks to be awarded to the Sportsmen, The minimum eligibility marks were fixed in the

G.O. only on the basis of academic marks. In the Special Categories providing for reservation, three seats only are reserved for eminent

sportsmen. In accordance with G.O.Ms. No. 443 dated 9-6-1994, notification was issued inviting applications for admission to the Medical

Courses. The prospectus issued was also only in accordance with the said G.O. The Forms of Application were also in accordance with the said

G.O. Thus, there was no representation whatever at any time on the pan of the Authorities that the Sports Grace Marks would be taken into

consideration for the purpose of admission to professional courses. G.O.Ms. No. 118 does not by itself make any reference whatever to

admission to any higher courses on the basis of grace Marks. We have already seen that on 6-7-1994, the Secretary to Government Education

Department sent a letter to the Director of Government Examinations to issue revised mark sheets after adding the marks awarded for sports with

the marks already secured in the qualifying examinations. A meeting is said to have been held on the very same day between the Director of

Government Examinations and the Secretary to Government and a decision was taken not to enforce the G.O. No doubt, as pointed out already,

some circumstances are relied on by the petitioners which would raise a suspicion regarding the correctness of the version in the Counter affidavits.

But the fact that not even one mark sheet was issued by the Director of Government Examinations addiing up the marks obtained in the qualifying

examinations with the Sports Grace Marks has been established by the records. The respondents have brought to our notice the scheme governing

Higher Secondary Examinations framed as early as in 1981. There is no scope under that scheme to add any grace marks to the marks awarded in

the subjects. The scheme itself has not in any manner been amended or modified by the Government by appropriate methods. Hence, the Director

of Government Examinations could not have issued any Mark Sheet as instructed by the Secretary to Government, Education Department, in her

letter No. 40138/Y1/94-1/ dated 6th July, 1994.

26. Though the validity of G. O. Ms. No. 118 is not challenged before us in these

petitions, it appears to be wholly unreasonable on the face of it.

We are not able to appreciate the awarding of Grace Marks in the subjects so generously as prescribed in the G.O., however eminent the person

concerned may be, in the field of sports. It is one thing to reserve a few seats in the Professional Courses for eminent sportsmen having regard to

their outstanding performance in the field of sports; but it is entirely another thing to bless him with a high score of marks in the educational field and

place him above the candidates who have toiled day and night for achieving eminence in that field. A cursory glance at the marks obtained by the

candidates selected for admission would show that a fraction of one mark, say even 0.05 mark, would make lot of difference. For example, in the

open Competition Category, there are ten candidates who have secured 290.60 marks, nine candidates who have secured 290.45 and another

nine candidates have secured 290.40. It is seen from the G.O. that the lowest of the grace marks is to the Second Prize Winner in the Educational

District Level at 1% of the aggregate marks. Such a person will get 2 marks in Physics, 2 marks in Chemistry and two marks in Biology by way of

grace marks, which means, he will be getting 2 marks in the aggregate over and above the marks obtained by him in the qualifying examinations,

when the marks obtained in the qualifying examinations are reduced to the base of 200 marks for the purpose of considering his selection. By

getting those two marks, he will be able to jump over at least 180 candidates. For example, Serial No. 116 in the Merit List for the open

Competition has secured 292.05 marks. Serial No. 300, the last candidate in the Open Competition list has scored 290.05 marks. A person who

is a Second Prize Winner in the Educational District Level, will be able to occupy the 116th rank even if he has scored only as many marks as the

candidate occupying the 300th rank in the qualifying examinations and the entrance examination. Of course, we are not expressing any final opinion

on the validity of G.O.Ms. No. 118. But, we were informed by the learned Advocate General, whose reputation for fairness is too well known,

that he has advised the Government to cancel the said G.O.

27. Whatever it may be, there is no question of any representation on the part of the Government at any time that the grace marks would be taken

into consideration for the purpose of admission to Professional Courses.

Consequently, the petitioners cannot invoke either the doctrine of legitimate expectation or the principle of promissory estoppel. Reliance is placed by them on the judgment of the Supreme Court in *Union of India and others Vs. Hindustan Development Corpn. and others*, . The Court has explained the scope of the doctrine of legitimate expectation. But the ruling does not help the petitioners in the present case. The Court pointed out that if a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well -- known grounds attracting Article 14 of the Constitution of India, but a claim based on mere legitimate expectation without anything more cannot IPSO FACTO give a right to invoke those principles and that it can be one of the grounds to consider, but the Court must lift the veil and see whether the decision is violative of those principles warranting interference. The Court also held that it depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation, must be restricted to the general legal limitation applicable and binding the manner of the future exercise of administrative power in a particular case. The Court said (at p. 1021, Para 36) :--

It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept.

28. A Division Bench of this Court had occasion to consider the scope of the doctrine and the applicability thereof in the matter of liquor trade in

A. J. Joy v. Govt. of Tamil Nadu, AIR 1993 Madras 282. The Bench placed reliance on the judgment of the Supreme Court referred to above in

the Union of India and others Vs. Hindustan Development Corpn. and others, and held that the doctrine had no applicability to that case which

was in challenge of a legislation. The Judgment of the Division Bench was affirmed on appeal by the Supreme Court in *Madras City Wine*

Merchants' Association and Another Vs. State of T.N. and Another, . The Court said that "legitimate expectation may arise --

a. if there is an express promise given by a public authority; or

b. because of the existence of a regular practice which the claimant can reasonably expect to continue; and

c. Such an expectation must be reasonable.

None of the above circumstances is present in this case.

29. The contention that Article 14 of the Constitution of India is violated because of the discrimination between professional colleges and non-

Professional colleges is without any merit. There is no need to point out that higher studies in Professional Courses will certainly stand on a different

pedestal from that of the non-professional Courses. If a person not eligible is admitted to Professional Courses and is ultimately conferred with a

degree or diploma in a Professional Course, it will affect the larger public interest, whereas it may not be so in the case of admission to non-

Professional Courses and conferment of non-Professional Degrees on ineligible persons.

30. There is also no merit in the contention that the principles of natural justice are violated in the Case of the Petitioner in W.P. No. 12959 of

1994. When the petitioner was selected by the Selection Committee, it was only provisional. The communication sent to her expressly stated that

her selection was provisional and it was subject to various Terms and conditions given in the Annexure. The mistake occurred because in her

application she had totalled up the marks obtained by her in the academic examinations and the grace marks awarded by the Sports Development

Authority. It was not noticed by the Selection Committee that she had herself added the marks in the application without showing the Grace Marks

separately. The mistake was found out when she approached the Madras Medical College for admission. In the Annexure to the Communication

sent to her informing her of the provisional selection, she was requested to produce the original certificates of the marks in the Higher Secondary

Examination as well as the Entrance Examination Mark Sheet. Clause 11 in the Annexure reads that her selection to the M.B.B.S./B.D.S., Course

shall be confirmed only after she satisfied the conditions mentioned therein, one of which was production of Original Certificates mentioned therein

and if any one of the Certificates was found to be defective or to have any discrepancy from the copy of it submitted with the Application Form,

the Selection and the admission would be cancelled. Hence, it cannot be

contended as if the selection was final and that notice should have been issued to her before the cancellation thereof. Learned Counsel for the petitioner relied upon the judgment of the Supreme Court in *Shrawan Kumar Jha and others Vs. State of Bihar and others*, . That case related to appointment of Teachers by the District Superintendent of Education. The appointments were later cancelled by the Government on the ground that the District Superintendent had no authority. Even before cancellation, the appointees claimed to have joined their respective schools. The Court held that prior opportunity of hearing should have been given to the appointees and issued directions accordingly to the Secretary to the Government, Education, for giving such an opportunity. That judgment will not help the petitioner in this case. Even at the threshold she was stopped and she was not admitted in the College. If the grace marks awarded to her for Sports are excluded, she is certainly not entitled to get admission in the Medical College as the total secured by her is only 284.25. She belongs to a backward Community and the cut -- off marks for the said community even as on 4-12-1994 is 286.85. There is no merit in her claim that she is entitled to a free seat.

31. Mr. Karuppan urged during the course of his arguments that a direction should be issued to the respondents to admit his clients in the Payment Quota by allotting Payment Seats. For reasons which are quite obvious, it is not possible for us to accede to the request and issue any such direction. It follows that our answer to Question (A) (ii) is also in the negative.

B. RETOTALLING WHETHER ANY FRAUD PLAYED?

32. Arguments were built up by learned counsel for the petitioners on the statements contained in the counter affidavits filed on behalf of the respondents and some discrepancies in the particulars furnished on the one hand by the Government and on the other by Anna University. In paragraph 3 of the Counter affidavit filed by the Director of Government Examinations on 30th day of August, 1994, it is averred that the retotalling commenced from 1-6-1994 and most of the cases were completed before the Entrance Examination. In paragraph 7, it is stated as follows :--

After scrutinising around 14000 scripts of 76000 applicants various candidates on different subjects, changes were identified in about 400 scripts

and correct total marks were awarded, and also immediate action has been taken, by intimating to the candidates at once, and fresh mark

certificates were issued to those candidates in time, Hence the contention on the petitioners that huge marks were awarded by way of retotalling is

baseless and incorrect.

It is argued that in the above paragraph the number of candidates whose answer scripts were retotaled has not been mentioned. It is alleged that in

the guise of retotalling, several papers have been revalued and more marks have been awarded to those candidates. A tabular statement was filed

by the Government before the Division Bench giving particulars of 16 candidates. Anna University had filed a statement giving particulars of the

candidates in whose case there is a difference between the marks as entered in the TNPCEE Application and M.B.B.S., Application, 1994. That

statement refers to 15 candidates. Learned counsel for the petitioners point out that Serial Nos. 5, 6, and 12 in the Statement filed by the Anna

University are also found in the Statement filed by the Government as Serial Numbers 6, 3, and 2 respectively and all the remaining numbers differ.

The petitioner in W.P.No. 13241 of 1994 has claimed that an application was made for retotalling within the time prescribed, but no reply was sent

by the Authorities. According to the Counsel, his client would have secured admission if the retotalling had been done.

33. In W.P.No. 12820 of 1994, the marks originally obtained by the petitioner were 236.15. On application for retotalling, it was found that he

was entitled to 288.65 marks. But the intimation regarding the same was given by telegram to the petitioner only on 20-7-1994 by which time the

selection list had been published. The petitioner made a representation on 21-7-1994 to take into account the marks awarded after the retotalling,

but in vain. After the filing of the Writ Petition the petitioner has been given a Payment Seat. The petitioner claims a free seat.

34. According to the counter affidavits filed by the respondents, there are certain guidelines for retotalling of answer scripts which are set out in the

counter affidavits. The relevant guidelines are that the question-wise mark and page-wise total must be checked very carefully and if there is any

change in totalling. It must be recorded in the report form, that the answers to the questions which were already valued and marks awarded should

not be touched, that the answers, if any, left out without being valued and not awarded marks must be valued and awarded marks and the details

of such cases should be noted down in the report form and the marks awarded should be added to the total already struck and that no comment

or opinion in any form about the valuation already done by the examiner need be made. We have found that the statements furnished by the

Government as well as Anna University contain not only the cases of retctalling but also cases of improvement marks. Having regard to the serious

allegations made by the petitioners, we decided to scrutinise the answer scripts of all the candidates who have been selected on the basis of

retotalled marks. We also scrutinised the answer scripts of candidates who claimed improvement marks. Serial Numbers 1 to 8 in the statement

given by the Government relate to retotalling. Serial No. 9 is a case in which the original mark sheet issued on a computer print-out was not

readable and, therefore, a revised mark sheet prepared manually was furnished to the candidate in Serial No. 10, a discrepancy in the marks

awarded in Biology was noticed and, therefore, a fresh mark sheet was prepared manually and issued. As regards Serial No. 11, he had passed

the qualifying examination in 1991 and applied for the Professional Course only in 1994. There was no question of retotalling in the case of Serial

Nos. 11 and 12. Serial Nos. 13 to 16 are cases in which the candidates had improved their marks by appearing for a second time in the qualifying

examinations. In the Statement filed by Anna University, Serial Nos. 4, 5, 6, and 12 are cases of retotalling whereas Serial Nos. 1, 3, 7, 9, 10, 13.

14, and 15 are cases of improvement. Regarding Serial Nos. 2, 8 and It there was a small discrepancy in the marks obtained in the qualifying

examinations. On a thorough scrutiny of all the answer scripts of the aforesaid candidates, we found that in the case of S. P. Mohan, Serial No. 8

in the List furnished by Anna University having registration number 421335, there is a discrepancy between the marks statement enclosed by him

along with the application for admission from that noted in the Tabulated Mark Register/ Application filed for ex Entrance Examination. In the

xerox copy of the mark sheet produced by him along with his application for M.B.B.S. Course, his marks are shown as follows :-- Physics 196,

Chemistry 197, Biology 198. In the Tabulated Mark Register, his marks are shown to be :-- Physics 172, Chemistry 180, Biology 186. We

directed the respondents to take appropriate action against the said candidate, after due enquiry.

35. In the matter of retotalling, we found that in two cases the authorities have not adhered to the Rules. In the case of V. Selvakumar having

Register Number 623547, he had scored 182 marks in Chemistry as per the Original Valuation. On his application for retotalling, four more marks

were awarded to him. On verification of the answer scripts and the records relating to retotalling, we found that he is awarded by the officer, who

rescruti-nised the answer papers, additional ten marks as follows :--

For Question No. 35 .. 4 marks.

For Question No. 48 .. 4 marks.

For Question No. 50 .. 8 marks had already been awarded. Twomoremarks were awarded on rescruinising.

When the rescruity report was forwarded to the higher authority, it was ordered that answer for Question No. 35 may alone be considered. The

other two suggestions made in the rescruity report were not accepted. Thus, it was decided to award four marks in addition for Question No. 35.

We found from the answer paper that the answer given to Question No. 35 was held to be wrong by the examiner who valued the paper earlier.

We also found that for Question No. 48(b)(1)(v), the answer was found to be erroneous at the time of initial valuation and for Question No. 50(b),

as stated already, he has been awarded 8 marks. It was, therefore, not open to the Rcscrutiny Officer to add any mark on the ground that the

answer was correct and wrongly evaluated previously. Unfortunately, that was overlooked by the higher official also who permitted addition of

marks for Question No. 35 only. Thus, the addition of four marks in Chemistry to the said candidate V. Selvakumar is clearly erroneous. But, that

does not alter the result in the matter of selection. His original marks in Chemistry are 182. He had secured 187 in Physics and 193 in Biology. He

has also scored 94.20 per cent in the Entrance Examination. On that basis, his total comes to 282.95. He belongs to Scheduled Caste Community,

for which the cut-off marks were 266.90 as on 18-7-1994 and 266.15 as on 4-12-1994. Thus, he was entitled to be selected. There is no

question of disturbing his selection.

36. Similarly, the case of T. Santhana-lakshmi with registration number 775371.

She has secured 189 marks in Physics as per the Original Mark

Sheet. On her application for retotalling, three marks were added. On a scrutiny of the answer paper and the records, it is found that the rescrutiny

report contains the following remarks :--

Q. 6 - Answer is correct

- Evaluated wrongly .. 1 mark may be given.

Q. 21 - Wrong evaluation

- no marks given. .. 2 marks.

Q. 48- Under valued

Only 6 marks given

out of 10 .. 2 marks.

On the face of it, the rescrutiny report is unacceptable, as it is against the rules prescribed for retotalling. We have found from the answer scripts

that for Question No. 6, the Examiner, who valued it earlier, treated the answer as wrong. Similarly, for Question No. 21 the answer was held to

be wrong by the previous examiner. For Question No. 48, the candidate was awarded previously six marks out of ten. It is beyond the jurisdiction

of the Rescrutiny Officer to revalue the answers and award marks. Unfortunately, the higher official to whom the report was sent, had accepted the

report with reference to questions 6 and 21 and awarded (1 + 2) 3 marks, making the total in Physics to be 192. She had obtained 196 in

Biology, 198 in Chemistry and 189 in Physics. She had secured 96.30 in Entrance Examination. Her total comes to 290.05. She belongs to

M.B.C. Community. She was selected in the Open Competition Category for which the cut-off marks were 290.20 on 18-7-1994. At that time,

her marks included the three marks awarded on retotalling, and therefore, her total marks was taken to be 291.80. Now we have found that her

total marks come to 290.05. But the cut-off marks for open competition had come down as on 4-12-1994 to 290.05. As she has scored the

requisite marks, her selection cannot be disturbed.

37. However, we have directed the Government Pleader to inform the concerned authorities to take appropriate action against the Rescrutiny

Officer as well as the higher official who had, in the above two cases, violated the rules prescribed for retotalling and revalued the answer scripts of

the two candidates. We direct the Government hereby to take appropriate action against such officers, so that such mistakes are not repeated.

38. Apart from the above mistakes pointed out by us, we have not found any error whatever in the matter of retotalling of the answer scripts. We

are satisfied that no fraud has been played as alleged by the petitioners with regard to retotalling.

39. In the case of the petitioner in W.P. No. 13241 of 1994, we found on a scrutiny of the answer scripts, four marks awarded for Question No.

36 had not been entered in the first page of the answer book and that he would be entitled to an addition of four marks on retotalling. But, that

would only make his total 263.85. He belongs to Scheduled Caste Community and the cut-off mark even as on 4-12-1994 is 266.15. Thus, he is

not eligible for selection. There is no merit, therefore, in the said writ petition.

40. In W. P. No. 12820 of 1994, the petitioner belongs to Backward Community. She had obtained 286.15 marks initially. Her application, filed

in time, for retotalling of Biology answer paper was accepted and five marks were awarded to her in addition to what she had already been given.

By the said addition, her total marks came to be 288.65. The cut-off marks for B.C. candidate were 287.05 on 18-7-1994 and 286.85 on 4-12-

1994. She is undoubtedly entitled to be selected for a Free Seat. We have scrutinised the answer script of the candidate in the Biology

Examination. We have found that it is a case of omission to enter five marks already awarded to her for one of the answers. Thus, her claim has to

be accepted and she should be given a Free Seat.

41. In the result, our answer to Question "B" is in the negative. But, the prayer of the petitioner in W.P. No. 12820 of 1994 is granted.

C. QUALIFYING EXAMINATIONS

WHETHER TO BE IGNORED.

42. The contention of the petitioners is that the answer papers in the qualifying examinations were not evaluated properly because of the teachers'

strike throughout the State at that time. The second reason is that the question paper in Chemistry had leaked out and re-examination was held.

Thirdly, it is alleged that Biology paper was also leaked out, but no re-examination was held. Fourthly, it is stated that the fact that 17000

applications were filed for retotalling the marks would by itself prove that the

answer papers were not evaluated properly. Fifthly, it was alleged that there was mass copying, particularly in Salem District.

43. In W. P. No. 15602 of 1994, the following averments are found in paragraph 9 of the affidavit :--

9. I submit that, a major component of the marks in the qualifying examination, under the selection criteria Rule 8.2(a) is the marks obtained in the

subject of Biology. I submit that massive malpractices were detected in areas of Salem and Namakkal. The Government of Tamil Nadu while

acknowledging the fact that massive malpractices had occurred, had only ordered re-examination in the subject of Chemistry alone. It has also

been alleged in press reports that malpractices in Salem District were wide spread and also indulged in other subject including Biology. It is also

alleged that the highest group of candidates who had scored more than 97.5% in Biology were from Salem. It is submitted that, a sizable number

of the candidates selected for the M.B.B.S. Course are from Salem District. It is submitted that of the 114 persons admitted to the Stanley

Medical College, Madras, 95 are from Salem District. It could not be out of the way to state that Stanley Medical College, known as S.M.C.

could be now identified as Salem Medical College. The literacy rate of Salem District is 53% and takes the rank of 17th among all districts of

Tamil Nadu. With this background the sudden emergence of Salem District as the top rank, in the matter of performance in the H.S.C. 1994

examination is unbelievable and surprising. As such the whole conduct of the qualifying examination is put at doubt.

44. It is argued that there is no denial of the said averments by the Government. There is no merit in the contention. The petitioner had filed

W.M.P. No. 28503 of 1994 for impleading the Director of Higher Secondary Schools and Director of Government Examinations as respondents

4 and 5 in the writ petition. In the counter affidavit filed by the Director of Government Examinations it is stated as follows in paragraph 3 :--

It is submitted that the examinations for 10 + 2 was conducted in March, 1994. The examination in the subject Chemistry held on 15-3-1994 was

cancelled due to the detection of certain malpractices in respect of the above subject in one of the centres in Salem. Re-examination was

conducted in the aforesaid subject "Chemistry" on 31-3-1994 after informing

the candidates about the same through mass media. There were no reports of any malpractice in respect of Biology examination which was held on 23-3-1994 as alleged by the petitioner. Consequently there was no warrant for cancelling the Biology examination which were held on 23-3-1994. I beg to submit that the Inspecting Officers of the Directorate have been diligent in conducting the examinations and have been that there is no room for any malpractices in any of the centres in the State. The allegations made by the petitioner in para 9 of the affidavit are absolutely false and baseless and are denied. I beg to submit that the other allegations made in the affidavit do not pertain to the Directorate of Government Examination.

45. In our opinion, there is sufficient denial by the Government in the counter affidavit of the averments made by the petitioner. It is significant to note that the petitioner has not chosen to make any specific allegation or provided the relevant particulars. The petitioner is only relying upon the population data sheet for the year 1990-91 for the State of Tamil Nadu and the statement showing the results of the XIIth Standard Examination for the various Districts in the State of Tamil Nadu during the years 1990 and 1991. In the population data sheet it is stated that the total population in Salem District is 39 lakhs comprising 20 lakhs of men and 19 lakhs of women. The percentage of literates among persons aged 7 and above in the said District is shown to be 53.31. As per the statement showing the results in the XIIth Standard Examination, the pass percentage in the District of Salem in 1990 was 66% and in 1991 was 63%, ranking X and IX in the State. It is contended that the figures of percentage of literates and the pass percentage relating to Salem District taken along with the alleged circumstance that 95 out of 114 persons admitted to Stanley Medical College are from Salem District, would lead to the inference that there were malpractices in the examinations and mass copying on a large scale. There is absolutely no merit in that argument. The percentage of literacy is with reference to the entire population in the District. That does not mean that those who have studied up to 12th Standard would not be so proficient in their subjects as the candidates in other Districts of the State so as to score high marks in the qualifying examination. In our opinion, the argument is one in despair and it may also be characterised as

absurd.

46. In the counter affidavit filed by the Director of Government Examinations in W.P. No. 14838 of 1994 it is stated that during the period of

valuation of language papers only some of the teachers went on strike seeking higher remuneration, but it did not prolong since the department

took immediate action to solve their problem and the strike was called off on 23-3-1994. Hence, the valuation work was not affected in any

manner. It is also stated in that affidavit that normally the valuation of Science subject scripts, is planned for 10 to 15 days according to the number

of examiners available and in this year, nearly 5680 subject qualified examiners were appointed for all the science subjects. Each examiner was

instructed to value only 24 scripts in a day between 8.30 a.m. and 12.30 p.m. and 1.30 p.m. and 5.30 p.m. In the forenoon session they were

given 12 scripts and in the after noon session another set of 12 scripts were given for valuation. The examiners had sufficient time to go through the

papers for proper valuation. All the examiners were provided with centrally prepared key answers and guidelines for valuation. The valuation was

done under the strict supervision of a Chief Examiner appointed for ten Examiners. It is stated in the counter affidavit filed by the same official in

W.P. No. 13216 of 1994 that valuation was arranged in ten different Central Valuation Centres from 15-4-1994 (1994) to 26-4-1994 and 5680

Examiners valued 7,36,817 scripts. We do not find any justification whatever to accept any of the contentions of the petitioners that there were

malpractices in evaluating the answer papers in the qualifying examinations or that the question paper in Biology had leaked out.

47. Reliance is placed by the petitioners on the judgment of a Division Bench of this Court in Association of Private Schools Affiliated to the

C.B.S.E. v. State of Tamil Nadu, 1992 2 Mad LW 155. It is contended that as done in that case, directions should be given in the present case to

ignore the marks awarded in the qualifying examinations and to make a selection on the basis of marks obtained in the Entrance Examination alone.

There is no merit in the contention. In view of the facts found in that case, the Division Bench issued such direction as to ignore the marks allotted

for the subjects in the Plus 2 Examinations and directed selection on the basis of the marks awarded in the Entrance Examination. We have found

on the facts of this case that there is no warrant for issuing such a direction.

48. The learned Advocate General has drawn our attention to the unreported judgment of a Division Bench of this Court, to which one of us (Raju.

J.) was a party, in W.P. No. 100116 etc. of 1993 dated 26-7-1993 (Voice (Consumer Care) Council rep. by its Trustee M. T. Nathan v. State

of Tamil Nadu). It was held in that case that a system of selection for admission into the Professional Courses in the colleges in the State of Tamil

Nadu by taking into account both the academic performance in the form of eligibility marks and also the marks secured in the Entrance

Examination, is quite in accordance with law and does not suffer any infirmity warranting interference by this Court. It was also found that the State

Government is well within its jurisdiction and competent to prescribe and stipulate the minimum eligibility marks in the relevant subjects in the

qualifying examination, in addition to and over and above the guidelines fixed by the All India Council of Technical Education and the All India

Medical Council as a condition precedent for applying to the Entrance Examination as well as for admission into the Professional Courses in the

colleges in the State in furtherance of the object of selecting the most meritorious candidates for such courses. Our attention was also drawn to the

judgment in Balamurugan R. v. Principal, Govt. Engineering College, Salem, 1994 Writ LR 336, by the same Division Bench reiterating the

principle.

49. In the result, the contentions urged by the petitioners are rejected and Question "C" is answered in the negative and against the petitioners.

D. VALUATION OF ANSWER SCRIPTS

IN ENTRANCE EXAMINATION, ANY

FRAUD?

50. The allegation that the answer scripts in the Entrance Examination have not been valued properly or correctly, is made by four of the

petitioners. Counsel appearing for the petitioners in W.P. No. 13491 of 1994 and W.P. No. 13307 of 1994 as well as counsel appearing for the

petitioners in W.P. Nos. 13975 of 1994 and 13977 of 1994 contend that there is ample scope for tampering with the answer scripts in the

Entrance Examination, in view of the fact that the candidates are instructed to use only pencil for shading the boxes of smaller size like 4 and (sic)

and to use ball pen to write inside the boxes of larger size like (sic) and wherever writing is required. It is alleged that a mischief has been played

by rubbing off the pencil markings . which were correctly made and making such pencil marking in the wrong number and disallowing marks on the

ground that the answers were wrong. We called for the answer papers of all the four candidates and checked them up ourselves. We found that

the candidates had been really given the benefit of doubt in one or two cases and awarded marks even though there is a difference between the

pencil marking and the ball pen writing. In spite of the fact that the writing in ball pen is found to be erroneous, marks have been awarded to the

candidates on the basis that pencil marking was correct. There is absolutely no justification for the contentions put forward by the petitioners in

those cases. We are informed by counsel for the Anna University that marking in HB Pencil is insisted as the answer scripts are fed into computer,

which takes in only such pencil markings. Nothing has been made out by any of the petitioners to prove any irregularity in the valuation of answer

scripts in the Entrance Examination. The question is answered in the negative.

E. METHOD OF SELECTION WHETHER CONTRARY TO CLAUSE 8.2(a) OF THE PROSPECTUS?

51. Two of the counsel argued that the method of selection adopted by the respondents is contrary to that prescribed in clause 8.2(a) of the

prospectus. That clause is in the following terms :

8.2(a) Selection for admission to Government/ Self-Financing Medical Institutions in Tamil Nadu for M.B.B.S./B.D.S./ B.P.T./B.O.T./B.M.R.Sc.

Courses 1994-95 will be made on merit on the basis of marks obtained by the eligible candidates in the prescribed science subjects at the

qualifying examinations reduced to the base of 200 marks and the marks obtained for the maximum of 100 marks in the Entrance Examination-

TNPCEE 1994 conducted by the Anna University.

In the Form of Application for the Professional Courses issued to the candidate, Clause 16 provides for furnishing the marks in select subjects in

qualifying examinations. Clause 17 provide for weighted total marks for a maximum of 200. That reads as follows :--

It is only on that basis, the weightage has been given to the candidates in the subjects. It is argued that as per clause 8.2(a). the marks obtained by

the candidates in all the science subjects at the qualifying examinations must be totalled up and reduced to the base of 200 marks. It is contended

that totalling up the marks in Physics and Chemistry and reducing it to the base of 100 on the one hand and adding the percentage in Biology on

the other is erroneous. Similarly, reducing the marks in Physics and Chemistry to the base of 100 and adding the same to the percentage in Botany

and Zoology taken together is not warranted by the provisions of clause 8.2(a) in the prospectus. According to learned counsel for the petitioner in

W.P. No. 13600/1994, he had secured 187 in Biology, 196 in Physics and 191 in Chemistry. If they are added up and reduced to the base of

200, the aggregate would come to $574/3 = 191.3$. He had obtained 96.3% in the Entrance Examination. His total would be 287.6. He being a

member of Backward Class community, would be entitled to admission, as the cut-off marks for the said class were 287.05 on 18-7-1994 and

286.85 on 4-12-1994. He is aggrieved by the method adopted as suggested in clause 17 of the Application Form. Learned counsel has referred

to the meaning of the word "reduced" found in "Webster New World Dictionary" and in "Law Lexicon (Webster)" at pages 626 and 836

respectively. He has also relied upon the judgments in Sant Ram Sharma Vs. State of Rajasthan and Another, ; State of Karnataka v. M. Farida,

"AIR 1976 SC 2482; Punjab Engineering College, Chandigarh v. Sanjay Gulati, AIR 1983 SC 580 and G. Sumathi v. State of Rajasthan, The

Director of Medical Education, 1983 Writ LR 344. The last of the aforesaid cases is decided by a Division Bench of this Court to which one of us

(Raju, J.) was a party. In those cases it has been laid down:--

(1) The Government cannot amend or supersede statutory rules by administrative instructions and if the rules are silent on a particular matter, the

Government can fill up the gaps by supplementing the rules. (2) There must be adjustment of equities between students wrongly admitted and those

unjustly excluded. (3) While considering admission for a professional college, the norms and procedures prescribed In the prospectus" should be

construed properly.

52. Learned counsel has also stated that in G.O.Ms. No. 443 dated 9-6-1994, the provision that is found in clause 8.2(a) of the prospectus was

alone set out in paragraph 15 thereof in the following words:

The Government direct that selection for admission to Government/Self-Financing Medical Institutions in Tamil Nadu for MBBS/BDS/B.

Pharmacy/B.Sc. (Nursing)/ BPT Courses, 1994-95 Session will be made on merit on the basis of marks obtained by the eligible candidates in the

science subjects at the qualifying examinations reduced to the base of 200 marks and the marks obtained for the maximum of 100 in the Entrance

Examination conducted by the Anna University. Ranking of the candidates will be done based on the total marks computed to a maximum of 300

marks mentioned above"".

53. We are unable to accept the contentions of the counsel for the following reasons:

The Government order in paragraph 5 prescribes the minimum eligibility marks as follows:--

Higher Secondary Certificate (Academic or I Year Degree Course) candidates, who have obtained the following marks shall alone be eligible to

apply for admission to I Year MBBS, EDS, B.Pharmacy, B.Sc., (Nursing) and BPT Courses.

(i) Other Communities:

(a) A minimum of 60% marks in Biology or Zoology and Botany taken together.

(b) A minimum of 60% marks in each of the subjects of Physics and Chemistry.

(c) Aggregate marks of (a) and (b) above to be not less than 140/200 in science subjects mentioned in (a) and (b) above.

(ii) Backward Classes candidates:--

(a) A minimum of 60% marks in Biology or Zoology and Botany taken together.

(b) A minimum of 60% marks in each of the subjects of Physics and Chemistry.

(c) Aggregate marks of (a) and (b) to be not less than 130 out of 200 in science subjects mentioned in (a) and (b) above.

(iii) Most Backward Classes and Denotified Communities candidates: --

(a) A minimum of 55% marks in Biology or Zoology and Botany taken together.

(b) A minimum of 55% marks in each of the subjects of Physics and Chemistry.

(c) Aggregate marks of (a) and (b) to be not less than 120 out of 200 in science subjects mentioned in (a) and (b) above.

(iv) Scheduled Caste, Scheduled Tribe: --

- (a) A minimum of 40% marks in Biology or Botany and Zoology taken together.
- (b) A minimum of 40% marks in each of the subjects of Physics and Chemistry.
- (c) Aggregate marks of (a) and (b) to be not less than 120 out of 200 in science subjects mentioned in (a) and (b) above.
- (d) Aggregate of the percentage of marks in (a) and the percentage of marks in (b) shall not be less than 80 out of 200 marks in science subjects.

Note:

In the case of candidates who have passed the Central Board of Secondary Education Examination in March/April 1992, "UN-MODERATED"

marks alone will be taken into account for consideration for selection".

54. Paragraph 15 of the Government Order must be read along with that part of paragraph 5 extracted above. The same provisions are repeated

in the prospectus. Clause 2.4 in the prospectus is nothing but a repetition of paragraph 5 in the Government Order extracted above.

Clause 8.2(a) and clause 8.2(b) in the prospectus are the same as paragraph 15 of the Government Order. Clause 8.2(a) must necessarily be

read together with clause 2.4. When clause 8.2(a) uses the definite article "the" when it refers to base of 200 marks, there must be a provision

elsewhere to identify the said base. If the said clause was intended to be read separately and independently of any other clause, there would have

been no necessity to use the definite article "the". Instead, the relevant clause would have been worded "reduced to a base of 200 marks".

Keeping the definite article in mind, if we search for the guidance in the prospectus, it is found that clause 2.4 contains the clue. When for the

purpose of eligibility for consideration for admission, the minimum mark ought to have been worked out in a particular prescribed manner, the

same method has to be adopted when weight age is to be given for the purpose of selection, It is too well known and also evident from the

prospectus as well as the Government Order that the academic subjects necessary for entering the Medical Courses are Physics, Chemistry,

Botany and Biology. Among such subjects Biology, Botany and Zoology are essential for entering a Medical Course. Physics and Chemistry are

common for Medical and Engineering Courses. For Engineering Courses, the subjects which a candidate should have studied in the Higher

Secondary Course are Mathematics, Physics and Chemistry. Among the three,

Mathematics is more essential than Physics and Chemistry. That is why, while selecting for Engineering Courses, weightage is given to the marks in Mathematics to the base of 100 and the marks in Physics and Chemistry taken together and reduced to the base of 100. The aggregate thus worked out is added to the marks obtained in the Entrance Examination. This system has been in vogue ever since the inception of selection for admission by the method of adding the marks obtained in the qualifying examinations and the marks obtained in the Entrance Examination.

55. Consequently- it follows that the method indicated in clause 17 of the Application Form for working out the weighted total marks for a maximum of 200 is entirely in accordance with clause 8.2(a) of the prospectus and there is no error whatever in that method.

56. In the result, there is no merit in the contentions of the petitioners and we reject the same. Question E is answered against the petitioners and in the negative.

F. RESERVATION FOR SPECIAL CATEGORIES UNDER CLAUSE 3.5 OF THE PROSPECTUS.

57. Only one of the counsel argued on this aspect, of the matter. He has appeared for the petitioner in W.P. No. 13597 of 1994. According to him, the special categories set out in clause 3.5 of the prospectus providing for reservation of seats for children and grandchildren of freedom fighters, for children whose parents, worked for bringing Tamil as official language and contribution"" for Tamil language development, for children of deceased se nice men, ex-service men and serving defence personnel, for children of police personnel, who died in heroic action and for the children born of inter-caste marriage, is violative of Articles 14 and 15 of the Constitution of India. According to him, the principle of equality has been given a go-by and the State is discriminating on the basis of parentage of the candidates. It is also stated by him that the principle of heredity is imported by virtue of such reservation. It is contended that Article 15(4) of the Constitution enables the State to make special provision only for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes and the

classification made in clause 3.5 of the prospectus will run counter to the said provision of the Constitution. In support of his contention, learned

counsel places reliance on the judgment of the Supreme Court in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, . The

case related to the Office of Village Munsiff under Madras Hereditary Village Officers Act (3 of 1895). A Constitution Bench held that S. 6(1) of

the Madras Hereditary Village Officers Act in so far as it makes discrimination on the ground of descent only, is violative of the fundamental right

under Article 16(2) of the Constitution and is void. Learned counsel submitted that the said principle would apply in the present case and the

reservation for the special categories mentioned in clause 3.5 of the prospectus must be struck down as unconstitutional.

58. The question is not *res Integra*. The matter had arisen directly for consideration on earlier occasions before the Supreme Court. In *Kumari*

Chitra Ghosh and Another Vs. Union of India (UOI) and Others, . the court held that the reservation of seats in the Maulana Azad Medical

College, Delhi in respect of categories (c) to (h) contained in Rule 4 of the College Prospectus relating to the eligibility for admission to the

college, was not violative of Articles 14, 15 and 29(sic) of the provided for sons, daughters of residents of Union Territories specified therein,

sons/daughters of Central Government servants posted in Indian Missions abroad, Cultural, Colombo Plan and Thailand scholars. The principle of

the ruling will certainly apply in the present case.

59. In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , the court held that setting apart seats in a similar manner is not a reservation

within the meaning of Article 15 of the Constitution, but laying down sources for selection necessitated by certain obligations towards those who

serve the interest of the country's security, certain reciprocal obligations and the like and no objection, therefore, can be taken on the ground that it

is excessive. The Court said (para 23):-

As aforesaid, the Government is entitled to lay down sources 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 Article 15 against which objection can be taken on the

ground that it is excessive. The reservation, as contemplated by Article 15, is the

one which is made under Rule 5. Under that Rule, 15%

reservation is for persons belonging to the Scheduled Castes. 3% for Scheduled Tribes and 30% for socially and educationally backward classes,

that is to say, 48% in all against 690 available seats after deducting 60 seats set apart under Rule 4. But setting apart 15 seats under Rule 4 (g) for

candidates who take up family planning programme does not constitute a reservation as any one of the lady candidates can take up that

programme. Therefore, the seats available for distribution would be 720, 48 per cent of which are reserved under R. 5. The question is whether

such a reservation is unreasonably excessive"".

There is no doubt whatever that the ruling would apply in this case and the contention of the petitioner has to be negatived. The above ruling of the

Supreme Court has been followed by a Division Bench of this court in P. Sabitha (Minor) v. The Director of Medical Education Madras (W.P.

No. 9406 etc. of 1983 batch order dated 6-4-1984) referred to already in a different connection. Hence, the question is answered. In the

negative.

G. PERUNDURAI MEDICAL COLLEGE:

60. The same learned counsel who argued against the reservation for special category contended that allotment of seats for the children of

employees in Transport Corporations in Pemndurai Medical College is unconstitutional. According to him, the College either must be treated as

Government college and all seats must be made free seats or it must be treated as a private college in which event, 50% of the seats must be

treated as payment seats. This contention was raised in an additional affidavit filed by the petitioner with the permission of the court obtained by

him in M.M.P. No. 23054/1994. According to the affidavit, the said College is run by the Transport Corporation wholly owned by the State of

Tamil Nadu and all the Corporations and the Government of Tamil Nadu have contributed and established the said College. Therefore, it is

contended that it must be treated as a Government College and all seats must be made free seats. The selection for admission to that College must

be only on that basis, It is alleged that the respondents have not done so, but they have allotted seats for the wards of employees in the Transport

Corporation.

61. The learned Advocate General has reported that after the passing of the judgment of the Supreme Court in Unni Krishnan, J.P. and others

Vs. State of Andhra Pradesh and others etc. etc., framing a scheme for admission to professional colleges, the employees of the Transport

Corporations moved the Supreme Court for clarification in the matter of admission in Perundurai Medical College and that the Supreme Court has

directed them to approach the Medical Council. It is further represented that the matter is pending before the Medical council. In view of the fact

that the Supreme Court has issued a specific direction in the matter of Perundurai Medical College and the Medical Council seized of the matter,

we do not think it proper to entertain and consider the contention raised by the petitioner. We leave the question open to be decided as directed

by the Supreme Court.

62, In the result, we leave open question G to be decided elsewhere

H. MISCELLANEOUS QUESTIONS:

(I) VANMLA CHRISTIANS:

63. The petitioners in W.P. Nos. 13695 and 14256 of 1994 contended that Vannia Christians have been wrongly included in the category of Most

Backward Classes in the prospectus, whereas they belong only to Backward Classes. Reliance is placed upon a judgment of this Court in N.

Vanitha (Minor) v. State of Tamil Nadu (W.P. No. 16501 etc. batch of 1993 Order dated 18-2-1994). G.O.Ms. No. 17 dated 26-4-1993

including Vannia Christians in the Most Backward Classes has been quashed. This position is not disputed by the respondents. It is brought to our

notice by the respondents that only two candidates by name Selvi A. E. Florence Vasantha Prabha with Entrance Examination Register Number

522370, who is shown as Serial No. 190 in the M.B.C. List of Selected Candidates and Andrew P. Thompson, having Entrance Examination

Number 223263, shown in serial No. 11 in the said List are Vannia Christians selected as belonging to M.B.C. The respondents have brought to

our notice a communication issued to Selvi. A. E. Florence Vasantha Prabha that she was wrongly selected as belonging to M.B.C. and the marks

obtained by her were not sufficient to select her under B.C. quota. Notice is given to her to show cause why her selection should not be cancelled.

In the case of the other candidate viz;., Andrew P., Thompson, he has secured

288.75 marks. The cut-off marks for B.C. Candidates as on 18-7-1994 were 287.95 and on 4-12-1994, 286.85. Thus, it is found that he has secured more than the cut-off marks required for B.C. candidates.

Hence, his admission is retained.

(2) SPORTS QUOTA.

64, One of the Senior Counsel appearing for some of the petitioners submitted that the Merit list for candidates selected under Sports Quota has

not been published. The respondents have furnished a complete list of candidates selected under the Special Categories prescribed in Clause 3.5

of the prospectus. In the Sports Quota four persons having register Nos. 321749, 551429, 231404 and 522342, belonging respectively to O.C.,

B.C., M.B.C., and S.C. have been selected.

(3) HIGH MARKS OBTAINED BUT NOT SELECTED:

65. The petitioners in W.P. No. 13317 of 1994, 13723 and 13724 of 1994 contend that they had secured very High Court marks in the

examinations and they ought to have been selected. The prayer in all the writ petitions is to declare the admission to the M.B.B.S. course for the

academic Year 1994-95 published on 18-7-1994 as unconstitutional and ultra vires the present Government Orders and consequently admit the

petitioner in each case to the said course. According to the affidavit of the petitioner in W.P. No. 13317 of 1994, he belongs to backward class.

He has secured 192 marks in the qualifying examinations and 93.8 marks in the qualifying examinations and 93.8 marks in the Entrance

Examination. The cut-off marks for Backward Classes was 287.05 on 18-7-1994 and 286.85 on 4-12-1994. Hence, the petitioner cannot claim

that he ought to have been selected. The petitioner in W.P. 13723 of 1994 claims to have obtained 283.87 out of 300 and he belongs to the

Backward Class. He is certainly not entitled to admission. The marks obtained by the petitioner in W.P. No. 13724 of 1994 are 283.05. He

belongs to backward class and he is, therefore, not entitled to be selected. Apart from making a general allegation that the selection is vitiated

because of addition of Sports Grace Marks to the selected candidates, there is nothing in the affidavits filed by the three petitioners, which it.

worthy of consideration.

(4) RANK OF THE SELECTED CANDIDATES NOT SHOWN IN THE MERIT LIST.

66. One of the counsel repeatedly contended that the Merit List published by the respondents on 18-7-1994 does not satisfy the provisions of the

scheme framed by the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . There is substance in

the contention. No doubt that list was not in accordance with the directions given by the Supreme Court in Unni-krishnan's case AIR 1993 SC

2178 and in a subsequent case relating to Government Colleges. But, the respondents rectified their mistakes and published a selection list on 3-8-

1994. That list has shown the marks obtained by each candidate within brackets. The list is itself in the order of marks obtained and the Rank of

the candidates is automatically known therefrom.

5. COUNSELLING

67. Learned counsel for the petitioner in W.P. No. 14248 of 1994 has contended that his client was not called for counselling even though persons

who had secured lesser marks than him were called for counselling. The petitioner has scored 284.75 marks. It is contended by him that though his

client has not expressed his option for counselling, the respondent, ought to have called him for counselling. According to him, the failure to do so

would violate the provisions of Arts. 14 of the Constitution of India. There is absolutely no merit in this contention. Clause 18 in the application

form provides for the candidates setting out the order of preference (OYP) for every group of seats. The clause reads thus;--

18. ORDER OF YOUR PREFERENCE (OYP) FOR EVERY GROUP OF SEATS

STATE THE ORDER OF YOUR PREFERENCE (OYP) FOR A GROUP BY ENTERING 1 OR 2 OR 3 .. OR 8"".

Admittedly, the petitioner did not express his option for payment seats in Self Financing Colleges. There is no duty on the part of the respondents

to call for counselling even persons who have not exercised option. Hence, the contention is rejected.

(6). DELAY IN RECEIPT OF APPLICATION BY THE SELECTION COMMITTEE

68. The petitioner in W.P. No. 13167 of 1994 has prayed for a Mandamus to consider his application for selection which has been rejected by

the respondents on the ground that it reached the respondents after the prescribed date. There is a conflict of opinion in this matter because of the

judgments of two different Division Benches. The counter-affidavit in the matter was filed by the respondents only after the petitioner's counsel and the learned Advocate General concluded their arguments in the writ petition. Hence, we are of the view of that it is proper to consider the said writ petition by a separate judgment after giving an opportunity to the petitioner to deal with the averments in the counter affidavit. Hence, we have not disposed of the said writ petition by this judgment. We are posting the same for hearing separately.

(7). B.S. CANDIDATES TREATED AS M.B.CS.

69. It is alleged in paragraph 10 of the affidavit filed in support of the petition in W.P. No. 15602 of 1994 that a sizable number of candidates who had applied for the Entrance Examinations as members of the Backward Community had subsequently applied for admission to M.B.B.S. Course as most Backward Class candidates. It is stated that the malpractice causes a shade of doubt on the entire selection process and that three candidates have been admitted in the Stanley Medical College on that basis. The allegations in the said paragraph are as vague as possible. The petitioner has not even chosen to give the particulars of the three candidates said to have been admitted in the Stanley Medical College. Unless the full particulars are furnished, it is not possible for the respondents to file a return on that matter. It can be however, noted that separate reservation came to be made for most Backward Class only a few years back in or about 1990. Before that there was only Backward Class and there was no division of B.C. and M.B.C. Many a candidate (sic) that they are members of Backward Class. There would have been no necessity for them to obtain certificates that they belong to Most Backward Class during the course of their studies. In all probability, they would have found the necessity to get such certificates for the first time when they applied for admission to the Professional courses. Thus, it is quite likely that a person who had previously a Certificate that he belonged to B.C., obtained later a certificate that he belonged to M.B.C. There is no merit in the contention.

(8). SEVERAL SELECTION COMMITTEES.

70. Yet another contention raised by the same petitioner is that the Selection Committee having failed to discharge their duties of making fair and

proper selection, issued a communication to all the colleges to re-scrutinise the; Certificates of all the selected candidates and decide upon their

eligibility. According to the petitioner, that itself goes to show that the Selection Committee has acted in a vicious and fluctuating manner. Learned

counsel has not been able to substantiate this contention. However, the learned Advocate General pointed out that the Secretary to the

Government, Health and Family Welfare Department had issued Telegrams on 29-7-1994 to all Deans of Medical Colleges in the following

terms:--

The intimation letters to all the selected candidates have already been despatched (.). They have been asked to join before 29-7-1994 (.).

Instructions for thorough scrutiny of their records have already been given (-.) In case of any bogus records or wrong information furnished by the

candidates the candidates should not be admitted and the matter should be referred to the Secretary, Selection Committee immediately (.). Deans

should be fully satisfied with the eligibility of the candidates before admission is given (.).

Grace Marks for Sports should not be added to the Higher Secondary Marks as per the Government's Order (.). The allotment has been made

only on the basis of academic marks in Higher Secondary and Entrance Examination Marks (.). If Sports Marks has been considered by mistake,

such cases should not be admitted and the matter should be brought to the notice of the Secretary, Selection Committee (.).

If any candidate does not join before 29-7-1994, this may also be brought to the notice of this Secretary, Selection Committee for allotting the

candidates from the Waiting List (.).

The learned Advocate General explained that they wanted to make sure that there was no mistake in the matter of selection as some of the

candidates had themselves totalled the marks obtained by them in the academic examination and the Sports Grace Marks and shown them in the

relevant clause in the Application Forms and some of them were by oversight not taken note of the Selection Committee. In fact, the said telegram

has enabled the authorities to weed out eight candidates who were wrongly selected on the basis of Sports Grace Marks. We do not find anything

mala fide in the said communication by telegram and there is no question of

several Selection Committees having functioned in the matter as alleged by the petitioner. There is no merit whatever in the said contention.

(9) Other Questions:

71 No other question was argued before us. But the following questions were argued before the Division Bench and mention is made for the same in the order of Reference.

(i) Relaxation of age: --

72. The petitioner in W.P. No. 13071 to 13073 of 1994 was born on 27-2-1975 and she does not fulfil the requirement prescribed in the

Prospectus. As per Clause 2.2 the candidate should have completed the age of "" years on or before 31st Dec. 1994 and no request for relaxation

of the age limit will be entertained. The petitioner, however, made a representation to the Commissioner and Secretary to Government, Health and

Family Welfare Department on 25-7-1994, praying for relaxation of the age limit in view of the high marks obtained by her in the Qualifying

Examinations and the Entrance Examinations. The prayer in W.P. No. 13071 of 1994 is to issue a mandamus directing the respondents to dispose

of the representation of the petitioner dated 25-7-1994. The prayer in W.P. No. 13072 of 1994 is for declaration that the provision in clause 2.2

of the Prospectus fixing the age of the candidate to be 17 years on or before 31-12-1994 is arbitrary, illegal and unconstitutional. The prayer in

W.P. No. 13073 of 1994 is for declaration that Clause 2.2 of the Prospectus in so far as it states that no request for relaxation will be entertained

is arbitrary and illegal. The prayers in these petitions cannot be granted. The Government is entitled to fix age limits and that has been done in the

Prospectus. That has been in force for quite a long time, and there is no justification whatever for interfering with the same. A Division Bench of this

Court has considered the question in detail and answered it in the negative in W.P. Nos. 15231 and 16400 of 1993 by judgment dated 18-2-

1994. We are entirely in agreement with the reasoning of the Division Bench and dismiss the Writ Petitions.

(ii) Equal equation:

73. The petitioners in W.P. Nos. 13126 and 1339 of 1994 are contending that the marks obtained in the Qualifying Examinations as well as the

marks obtained in the Entrance Examination must be taken into account in equal proportion and the eligibility for admission shall be determined on

that basis. In other words, the case of the petitioners is that the marks obtained in the Academic Examinations and the marks obtained in Entrance

Examination should all be totalled up and reduced to a common base and the eligibility marks should be worked out. The petitioner in W. P. No.

13126 of 1994 has obtained 189 in Physics, 194 in Chemistry and 182 in Biology in the Academic Examinations. In the Entrance Examination the

petitioner has obtained 48.8 in Biology and 49.2 in Physics and Chemistry out of 50 each. According to the petitioner, the marks obtained in the

Entrance Examination shall be worked out with the base of 150 and similarly the marks obtained in the Qualifying Examinations should be worked

out with the base of 150. The total marks obtained thereby shall be the criterion for admission. We are unable to accept this contention. The

method of working out the marks for the purpose of admission has been in vogue for quite some time and it is for the Authorities concerned to

prescribe the same. It is not for the Court to prescribe any method. We have already seen that importance has to be given to Biology for medical

courses and to Mathematics for Engineering Courses. We do not find any error whatever in the method prescribed by the Authorities. There is no

merit in the contention of the petitioners. Hence, these writ petitions deserve to be dismissed.

(iii) Reservation in payment seats:--

74. It is argued that the principle of reservation must be applied in the case of payment seats also in W.P. No. 14074 of 1994. There is no merit in

this contention. The Supreme Court has in Unmkrishnan's case, AIR 1993 SC 2178 held that payment seats shall also be allotted on the basis of

inter se merit. Allotment is made to those who opt for such seats. The question of reservation can arise only in the case of free seats. In the very

nature of things there cannot be any reservation in allotment of payment seats. Hence, this contention is rejected.

CONCLUSION

75. No separate argument was advanced for admission in Engineering or B.D.S. Course. The Writ Petitions relating to them are based only on the

challenge to award of grace marks for Sports. Hence, we have not dealt with

them separately.

76. In the result, in view of our answers to the questions framed, all the Writ Petitions excepting W. P. No. 12820 of 1994 and 13167 of 1994 are

dismissed. W.P. Nos. 12820 of 1994 is allowed as prayed for by the petitioner. There will be no order as to costs in any of the Writ Petitions. We

are posting W.P. No. 13167 of 1994 for hearing separately.

77. All the W.M.Ps. except W.M.P. No. 19988 of 1994 in W.P. No. 13167 of 1994 are dismissed in view of the disposal of the Writ Petitions.

W.P. No. 12517 etc., of 1994 batch.

When we were about to pronounce the judgment of the Full Bench today, Mr. R. Thirugnanam, learned counsel for petitioner in W.P. No. 13676

of 1994 (Item No. 195 in the List) represented that his client has been allotted a seat and has been admitted in the Medical College pursuant to the

judgment of the Supreme Court. He has now reported that the said writ petition has become infructuous.

The said writ petition is dismissed as infructuous and included in the List as Item 17 in page 4.

78. Order accordingly.