

(1995) 07 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No's. 2254, 2389, 2610, 2684, 2851, 2852, 2926, 2927 and 2930 of 1995

Shaikh Raja Sk. Kasim

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1)

Citation : (1995) 4 BomCR 549 : (1996) 1 MhLj 187

Hon'ble Judges : S.G. Mutalik, J;B.N. Deshmukh, J

Bench : Division Bench

Advocate : A.K. Kanade, as Amicus Curie in W.P. No. 2389 of 1995, P.R. Patil, for Amravati University in W.P. No. 2389 of 1995, A.S. Joshi, for Pune University and Swami Ramanand Tirth University in W.P. Nos. 2389, 2254, 2610, 2684, 2926 and 2930 of 1995, S.S. Choudhary, for North Marathwada University, Jalgaon in W.P. No. 2389 of 1995, Santosh A. Shah, for Shivaji University in W.P. Nos. 2389, 2851, 2852, 2926 and 2927 of 1995, Shinde and Mahajan, for Nagpur University in W.P. Nos. 2389, 2851, 2852 of 1995, P.V. Mandlik, as Amicus Curiae in W.P. No. 2851 of 1995 and V.J. Dixit, in W.P. Nos. 2926 and 2927 of 1995, V.A. Dbohle, in W.P. Nos. 2254 and 2610 of 1995, V.C. Gangapurwala, in W.P. Nos. 2610, 2815, 2852, 2926, 2927 and 2930 of 1995 and Vivek Dhage, in W.P. Nos. 2684 and 2930 of 1995, for the Appellant; V.G. Gangapurwala, A.G.P. for respondent Nos. 1 to 3 in W.P. No. 2389, 2254, 2684, 2926, 2977, 2930 and 2610 of 1995 and S.G. Bora, in W.P. Nos. 2254, 2389, 2851, 2852, 2926 and 2930 of 1995, for the Respondent

Judgement

B.N. Deshmukh, J.—In these petitions, petitioners have challenged the rules and/or procedure for admission to B.Ed. Course for this year. By resolution dated 30th December, 1994, the Government has prescribed guidelines for admission to B.Ed. Course for the year 1995-96 prescribing the eligibility, distribution of seats District-wise as well as for candidates from all Universities in the State, fees for the candidates to be admitted in Government B.Ed. Colleges, Government aided private Colleges and non-aided private Colleges run by private managements.

2. It seems that for the first time, the Government thought it fit to keep reservation for the candidates belonging to respective districts where the B.Ed. Colleges are located. Fifty per cent of seats were reserved for District-wise Colleges i.e. for the Colleges located in that District irrespective of whether the College is Government College, Government aided College or non-aided private College. From the arguments advanced at Bar, it is clear that for past some years, the admissions were governed and granted on the University-wise basis. Last year, as the total admissions were given for University-wise to the candidates belonging to that University area, under order of this Court, 5% seats were allotted to the candidates belonging to other University area.

3. Now a different scheme is adopted. Presently 50% seats are meant for district-wise candidates and remaining 50% seats of all Colleges were kept open for other University areas in the State.

4. The chaotic conditions in which admissions are proceeded with can be gathered by different circumstances. In accordance with the resolution dated 30th December, 1994, the Universities have published notices. In the notices issued by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, and Swami Ramanand Teerth Marathwada University, Nanded, it is categorically mentioned that the seats are available from that University to the candidates who have obtained the first degrees in Arts, Commerce and Science from any University of the State. It is not so mentioned in the advertisements issued by Universities such as Pune, Bombay and North Maharashtra. Further there is no mention in any advertisement regarding the distribution of seats, 50% District-wise and 50% for candidates who have passed first degrees in Arts, Commerce or Science from any of the University in the State.

5. There is another point which requires consideration is that the rules are framed for admission only by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad; Nagpur University, Nagpur, and by Uttar Maharashtra University, Jalgaon. Admittedly, there are no rules framed for admission to B.Ed. Course by Shivaji University, Kolhapur; by Pune University, Pune and by Amaravati University, Amaravati. It seems that they have adopted guidelines prescribed by the Government in its policy decision contained in the Government Resolution dated 30th December, 1994.

6. In respect of Home Science, we may mention that the advertisement issued by some of the Universities mention that the B.Ed. Course is available for the graduates from non-Agricultural University who have obtained degrees in Home Science also. Some of the Universities have not mentioned so in their advertisement.

7. Shri V.G. Gangapurwala, learned Assistant Government Pleader appearing on behalf of respondent-State, contended that before taking a policy decision, the Government was guided by the Committee headed by the Vice-Chancellor of the Bombay University and apart from other members, Registrars of each University

were members of the Committee. We are further told that such Committee met once in Pune in November, 1994, and it has not met thereafter. The minutes of the meeting are not maintained and, therefore, they are not made available to us during the course of arguments.

8. Having regard to the importance of the matter, we had issued notices to all the concerned Universities in the State and in response to these notices, except the University of Bombay, all the Universities are represented before us. In spite of the notice given by this Court, the authorities of Bombay University have chosen to remain absent and are not represented by anybody. It seems that some information by way of documents was sent to Shri Gangapurwala in a very casual manner to meet the points raised in the case. Apart from the notice by this Court, Shri Gangapurwala had produced before us the communication dated 3rd July, 1995, informing the Registrar of Bombay University, that the information is required for the decision in a matter pending for B.Ed. admissions in this Court and accordingly the matter will come up on Board on 4th July, 1995. Shri Gangapurwala further informs us that before this communication dated 3rd July, 1995, there was telephonic talk by the Director of Education with the Registrar of Bombay University in the subject matter pointing out that the information is required for the decision of the matter pertaining to B.Ed. admissions for justification regarding departure from earlier Rules. In the communication, not only this, but it is pointedly informed that they should remain present with the necessary information and documents at 10.00 a.m. on 4th July, 1995, when the B.Ed. admission matter will be taken up for hearing. In spite of this, the authorities of the Bombay University have chosen to remain absent.

9. The Vice-Chancellor of Bombay University was the Chair-Person of the Committee in respect of the formation of policy for B.Ed. admissions this year. The admissions of B.Ed. had been a matter of concern in the State for several years. Petitions were filed not only at Aurangabad, but also at Nagpur and Bombay in the past. Not only that, the matters were required to be taken to the Supreme Court. Probably in this background, the Government had formed the Committee to have proper guidance of experts in the matter before any guidelines are provided by the State Government. When the rules and procedure are challenged before this Court, the authorities in the Education Department probably thought rightly to bring to the notice of the authorities the importance of the matter and desired the presence of the Bombay University before this Court. Apart from this, the scheme of admissions is so formulated that the admissions were made available to other University candidates. The candidates passing their first degree from Bombay University may apply for B.Ed. admission to other Universities. Similarly, it is very likely that the candidates from other Universities might have applied for admission to B.Ed. Course in the Colleges located in Bombay University area. In the nature of the scheme, any decision taken by this Court was likely to affect interest of candidates from all Universities including Bombay University. The lack of understanding of the importance of the

matter on the part of the authorities of Bombay University is highly deplorable, more particularly, so when the Vice-Chancellor of Bombay University was the Chair-person of the Committee formulated for guidance in the matter.

10. As already pointed out, there is drastic change in the rules. The justification ought to have come either from the State Government or from the Committee of which the Vice-Chancellor of Bombay University was Chair-Person. The attitude shown by the authorities of the Bombay University is practically unpardonable. We hope that the Government will take care while appointing person hereafter in such delicate matters to see that the person must be responsive to the needs of the society and shoulders the responsibility of explaining the circumstances which were taken into consideration which necessitated the change. In the affidavit-in-reply of the State, it is clearly mentioned that the students from middle strata of the society only apply for the B.Ed. Course. Having regard to this, it was expected that the authorities would not only be responsive but sensitive to the problems involved while deriving the scheme for admission to course such as B.Ed. We depreciate the practice followed in this matter by the Bombay University inspite of the notice of this Court. In fact, we could have issued notice of contempt. Instead of that, we hope the warning, given by us, while appointing a person as "Head of the Committee" would be seriously taken by the State Government, will suffice.

11. From the arguments advanced before us, the points which require consideration are that the District-wise reservation to the extent of 50% made under the rules violates Article 14 of the Constitution and operates discriminately with regard to the merits.

12. In the light of the scheme suggested by the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , (hereafter referred to as "Unni Krishnan's case" for the purpose of brevity) the distribution of free and payment seat is not made. Therefore, the challenge is that the scheme so formulated is violative of the ratio laid down in Unni Krishnan's case.

The most important aspect which requires consideration is what may be termed as law of equivalence as the candidates belonging to different Universities and obtaining first degrees do not stand on common platform, qua the subjects, total number of marks and qua the marks considered by the authorities while granting admission to B.Ed. Course.

13. Till last year, the admissions were available for graduates who obtained first degree from Agricultural Universities, and more particularly so, for graduates with Home Science from Agricultural Universities. This year, as they are excluded, such exclusion is attacked on the ground of discrimination having no nexus with the object sought to be achieved, as violative of Article 14 of the Constitution of India.

Though there is reservation for physically handicapped persons similar to that of

Scheduled Caste and Scheduled Tribes, but in the matter of payment of fees, exemption is given to candidates belonging to scheduled Caste and Scheduled Tribes and such exemption is not given to the physically handicapped persons in the matter of payment of fees.

There was challenge based on the scheme as made applicable for Urdu Medium students as there are only few Urdu Medium Colleges. There is one Government College and one Government aided Urdu Medium College and some private Urdu Medium Colleges. But there is not a single College in Urdu Medium in the entire region of Nagpur i.e. Nagpur University area and Amravati University area. In the District-wise distribution, there is also discrimination violative of Article 14, qua the students belonging to Districts where there are no Government and Government aided Colleges or where there are no Urdu Medium Colleges at all.

14. There is further challenge based on the ratio of distribution of seats in respect of Arts, Commerce and Science. So far as old Marathwada University is concerned previously B.Ed. admissions were granted in specific ratio which was based on faculty-wise distribution. Such faculty-wise ratio is not provided for which results in giving more number of seats to Arts Graduates than the Science and Commerce Graduates.

15. One basic argument was based on the fact of District-wise reservation resulting in a great discrimination, qua the fees prescribed by the State Government. The fees prescribed under the rules, in the Government Colleges is Rs. 3,000/- per student in open and O.B.C. categories. While same is the case (sic) aided Colleges. The fees prescribed for the candidates in open category in unaided private College is Rs. 12,500/- per student. So far as candidates belonging to Scheduled Caste, Scheduled Tribe and V.J.N.T. are concerned, there is no fees prescribed in Government and Government aided Colleges. While fees of Rs. 9,500/- per student is prescribed for in unaided private Colleges. There are four Districts in the State where there are no Government or Government aided Colleges. The challenge is that in those four Districts, there is not a single seat available for the candidates selected for admission in either of the categories on payment of Rs. 3,000/-. But the candidates will be required to pay Rs. 12,500/- in open category and Rs. 9,500/- for the candidates belonging to Scheduled Caste, Scheduled Tribes and V.J.N.T. categories.

There is general argument based on the basis of non-publication of proper advertisement which has resulted into injustice caused to those candidates for lack of knowledge in respect of availability of admission to B.Ed. Course in other Universities also.

16. The formidable challenge is based on denial of equal opportunities in the matter of service, as the possibility of gaining employment by acquiring qualification of B.Ed. is available to large number of candidates where Colleges are located in large number and such availability is reduced to the barely minimum where the Colleges are less in number irrespective of merit of the

candidate, which is violative of provisions of Articles 14 and 16 of the Constitution.

17. The challenge is, therefore, to the scheme as a whole and in particular to Rule and/or guidelines regarding District-wise reservation and method of calculating merit for the seats for all University areas in the State.

18. Shri Gangapurwala was good enough to provide the statistics in respect of number of Colleges in each University area. The position of number of Government Colleges, Government aided Colleges and unaided Private Colleges is given as under :---

19. It is worthwhile to note that two Government Colleges are located in Nanded and Parbhani District only. While there is not a single Government or Government aided College in Latur District though there are two unaided private Colleges in Latur District; of Swami Ramanand Teerth University at Nanded.

20. The counsel appearing on behalf of petitioners in various petitions, raised various points which were argued before us. We had also assistance of the Counsel appearing on behalf of various Universities. So also, Shri V.G. Gangapurwala, learned Assistant Government Pleader, made submissions for the State Government and other authorities.

21. Coming to the question of district-wise distribution, the counsel for petitioners have heavily attacked the distribution of seats on the ground that the location of Colleges in different districts has no nexus either with the population or with the number of graduates produced every year. They have further pointed out that there is also no nexus between the seats allotted in favour of district-wise candidates by way of reservation and the intake capacity by way of absorption of B.Ed. Graduates in various appointments. Shri Gangapurwala contended that, in fact, in almost all the districts, there is saturation of B.Ed. Graduates and they are already in excess of the requirement of concerned district, probably over number of years. Therefore, challenge to the district-wise distribution on the ground of discrimination need not be entertained.

22. It is very difficult to accept the contention raised by Shri Gangapurwala in this regard. It may be noted, that in one District of Buldhana, there is only one College which is Government B.Ed. College. While in District of Kolhapur, there are 15 B.Ed. Colleges and in Bombay 28 Colleges. The intake capacity in Buldhana College is restricted to 70. While in Kolhapur District, it is more than 1000; and in Bombay more than 3000. Similar situation we find, even if the picture of the State as a whole is considered, or even if we take a break up University-wise, or on the basis of Revenue Divisions. In the affidavit in reply (Annexure "F") filed on behalf of Shivaji University, Kolhapur, it is stated that the total number of candidates who have passed the first Degree Examination from Kolhapur District in all the faculties of Arts, Science and Commerce taken together is 4755. While in Sangli District, the candidates who have passed in all these categories taken together are 3694. In Solapur District, the candidates in

all these faculties are 3467, and in Satara District, they are 3220 in numbers. The table indicates that these are the results of the examinations held in March-April, 1995. As against this position of Graduates, if we take the strength and capacity of B.Ed. Colleges to admit the students in Kolhapur District, there is capacity of 1040 students in all the Colleges. While in Sangali and Satara Districts, each district is having capacity of 400 and Solapur District is having capacity of 360. Out of these seats, 50% are reserved district-wise. Meaning thereby, in Kolhapur District, 520 students from that district will be admitted by way of reservation to the said course this year. As against this, only 180 students will be admitted from Solapur District, and 200 students each will be admitted from the Districts of Satara and Sangli in that category. From the results which are made available to us, it can be roughly gathered that the ratio of admission to B.Ed. Course is not proportionate qua the number of candidates passing first degree course in each of the district. This is by way of illustration.

23. If we consider the rules qua Urdu Medium students, there are hardly 8 Urdu Medium Colleges in the State. There is one Government College at Bombay and one Government aided College at Aurangabad. The other 6 Colleges are unaided Private Colleges. There is not a single College located in the Nagpur Region consisting of two Universities viz. Nagpur University and Amravati University. As one Government College is located at Bombay and one Government aided College is located at Aurangabad, and all unaided private Colleges, one in each District viz. at Bombay, Thane, Pune, Nashik, Jalgaon and Solapur, a mere glance of the distribution of seats affects several districts where there are no Urdu Medium Colleges at all. Apart from the discrimination in the fees to Government, Government aided Colleges and unaided private Colleges, the discrimination will be writ at large considering the district-wise reservation against the candidates belonging to those districts where the Colleges are not located.

24. In the whole scheme, the candidates having less marks in those districts where the Colleges are located are likely to get admission to B.Ed. Course ignoring the claim of other meritorious candidates from other districts. For Urdu Method, a candidate passing from the entire region of Nagpur, who has secured more marks than the candidate passed from Bombay or Aurangabad District, will be preferred for the district-wise admission as there is reservation in his favour. The policy of reservation adopted by the State Government is, therefore, highly discriminatory and ignores the merit of the candidates. A preference is given merely because the candidate is resident of a particular district and a meritorious candidate is denied admission merely because the candidate resides in a district where there is no College. The discrimination so made has no nexus with the objects sought to be achieved.

25. The district-wise reservation is considered by the Supreme Court in the case of Minor P. Rajendran Vs. State of Madras and Others, . In that judgment, it is held that the Rule which provided for district-wise distribution of seats according to the population of the district, is hit by Article 15(i) of the Constitution of India.

26. In the said Judgment, the challenge under Article 14 is considered as violative of the equal protection of the laws inasmuch as said allocation of seats may result in candidates of unfair calibre being selected in one district while candidates of superior calibre cannot be selected in other district. In para 11, it is stated :

"The question whether district wise allocation is violative of Article 14 will depend on what is the object to be achieved in the matter of admission to medical Colleges. Considering the fact that there is a larger number of candidates than seats available, selection has got to be made. The object of selection can only be to secure the best possible material for admission to Colleges subject to the provision for socially and educationally backward classes. Further whether selection is from the socially and educationally backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources. If that is the object, it must necessarily follow that that object would be defeated if seats are allocated district by district."

It is further observed :

"the allocation of seats district wise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many cases in the object being destroyed, and if that is so, the classification, even if reasonable, would result in discrimination, inasmuch as better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources."

27. As an attempt seems to have been made to overcome the ratio laid down by the Supreme Court in *Minor P. Rajendran's case* (cited supra), a wistful devise was carved out. Instead of district-wise distribution of seats, it was made unit-wise, and the Supreme Court in the case of *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, , has considered this unit wise distribution and held that method of unit wise distribution of seats violates Articles 14 and 15 of the Constitution of India.

28. The observations of the Supreme Court in these two authorities not only apply squarely in this case but the district-wise distribution militates in this case to much more larger extent in view of the fact that there is no equitable distribution of Colleges in all the districts. But the strength of Colleges varies from 1 to 28. The facts are still glaring when there is not a single Government or Government aided College in four of such districts, namely, Latur; Jalna; Gadchiroli and Sindhudurg. In the facts of the present case and in the light of the judgments of the Supreme Court, district-wise distribution is violative of Articles 14 and 15 of the Constitution of India.

29. The discrimination made under the rules is still glaring if we compare the examinations conducted by various Universities and the marks considered for awarding degrees. It is admitted position, that Degree Course consists of three years everywhere. But while deciding the total percentage of first Degree,

Bombay University takes into account the marks obtained by the candidates in Third Year of the examination only. Whereas Pune University and Uttar Maharashtra University, Jalgaon, have taken into account the marks obtained by the candidates at the Second and Third Year examination of the Degree Course. While Shivaji University, Kolhapur; Dr. Babasaheb Ambedkar Marathwada University, Aurangabad; Amrawati University and Nagpur University take into account the marks obtained at the First, Second and Third Year of the first Degree Course. The total aggregate marks for deciding percentage of marks at the first degree level differ from University to University. The merit for admission to B.Ed. Course is considered on the basis of the marks taken into consideration by different Universities. The total number of marks which are taken for considering the percentage in the Bombay University is 800. In Uttar Maharashtra University, Jalgaon, and Pune University, it is 1200. While in the other four Universities, the total number of marks, according to the affidavit on behalf of State, ranges from 1800 to 2000. (The Counsel for Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, and Swami Ramanand Teerth Marathwada University, Nanded, have told us that for B.A. Examination, the marks taken into consideration by these Universities are to the extent of 2500.) This affidavit gives the figures of marks and the years for only the Arts Degree Course. While in Science Degree Course, in Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, and Swami Ramanand Teerth University, Nanded, the candidate appearing with Biology has to appear for the examination carrying total of 3,700 marks and with Mathematics carrying 3,400 marks spread over for three years. While in Pune University and Uttar Maharashtra University, Jalgaon, the total number of marks for Science Degree are 1,900. In Shivaji University, Kolhapur, it is to the extent of 2,700. Similar is the position with regard to Commerce faculty. Having regard to the pattern at each University level, percentage of marks at the first Degree examination differs from University to University.

30. In these circumstances, it is very difficult to consider that all the candidates are on par for consideration on the basis of merits or are brought on par for consideration on merit in view of such divergence even in respect of the calculations relating to aggregate marks.

31. The fifty per cent seats which are meant for other University candidates contemplate a common merit list and, in fact, a common merit list is prepared of such candidates for admission to 50% seats other than district-wise reserved seats. The common merit list, so prepared, suffers from initial disability as there is nothing common between the Universities in the matter of calculation of marks while counting the aggregate.

32. It is admitted position, that for B.A. and B.Sc. Examinations, there are several choices of the subjects available to the candidates. Admittedly, no attempt is made to bring all these candidates on par. We may usefully refer to the decision of this Court in Writ Petition No. 195 of 1986 : A.R.G.V. Shrinivas

Reddy Vs. Marathwada University and Another, , through its Registrar, and another, decided on 25th July, 1986. The question of aggregate of marks for XIIth Standard examination in the Education Board of Maharashtra and in Education Board of Andhra Pradesh came up for consideration before Division Bench of this Court in the said writ petition. In Maharashtra State the candidate who seeks admission to Engineering Course, marks obtained by such candidate in Physics, Chemistry and Mathematics are taken into consideration. In Maharashtra, candidate is required to appear in all the subjects each having 100 marks. While in Andhra Pradesh, the candidate was required to appear in Physics with 150 marks, Chemistry with 150 marks and Mathematics with 300 marks. In that examination, more weightage was given to Mathematics qua the subjects of Physics and Chemistry. What was required to be considered was on the basis of law of equivalence and to be brought three subjects on par and then calculate the aggregate. This was necessary to be done as there was weightage given to the subject of Mathematics. In Maharashtra Board all the three subjects, Physics, Chemistry and Mathematics were on par carrying 100 marks each. This was not in Andhra Pradesh Board. More weightage was given to the subject of Mathematics. This matter was required to be considered by the Division Bench of this Court as the candidate from Andhra Pradesh had applied for admission to Engineering Degree Course and on the basis of reciprocity, the candidate was entitled to get admission in Old Marathwada University. However, the eligibility certificate was denied to the candidate on the ground that he had not secured 50% aggregate marks in the subjects of Physics, Chemistry and Mathematics taken together. The aggregate of Andhra Pradesh candidate was arrived at without considering the extra weightage given to the paper of Mathematics. It was observed :

"The methodology adopted by the University in calculating the marks obtained by the Students passing inter-mediate examination of the Andhra pradesh Intermediate Education Board not only violates the rule of equivalence in real sense of the term, but also the rule of averages.

It was further observed :

"It must be remembered that the equivalence is of the examinations and not of the percentage as mentioned in the relevant clause of the Ordinance. The average percentage of the aggregate marks in all these subjects taken together cannot be calculated unless the three subjects are treated equally as is done by the H.S.C. Boards in Maharashtra State."

This is reiterated by the Division Bench of this Court in other matters involving the similar point i.e. in Writ Petition No. 4142/1993 with Writ Petition No. 3932/1993 decided on 4th January, 1994.

33. Unless the candidates are brought on par, the merit cannot be considered in view of the ratio laid down in these two cases by the Division Bench of this Court. Where the candidates are examined for different subjects with different marks

and where the number of marks are calculated for one year, two years and three years in different Universities for their own purposes, may probably for maintaining standards, but when such candidates from different Universities apply for admission to a course like B.Ed., all the candidates will be required to be brought on par and then consider the merit. Such a thing having not done, we feel, that the method followed by calculating the aggregates and averages on the basis of marks obtained at different examinations varying from First Year to Third Year, naturally results in injustice. The merit list, therefore, suffers from intrinsic lack of merit. In view of such variations in different Universities in the State and in the Country, the Supreme Court had, therefore, thought it fit to direct to have the common entrance examination which alone will provide a guide to fix the common merit.

34. The common merit list as prepared by all these Universities while considering admission to 50% seats open for other Universities is, therefore, arbitrary and unreasonable and violative of Article 14 of the Constitution of India.

35. The next important question which requires consideration is the application of the scheme prescribed by the Supreme Court in Unni Krishnan's case (cited supra). As admittedly, there are unaided private Colleges to the extent of 96 as against 12 Government and 36 Government aided Colleges. It was argued by different Counsel appearing for petitioners before us, that the scheme so envisaged for admission to private unaided B.Ed. Colleges does not take into consideration the distribution of seats in free as well as payment categories.

36. There is not a single seat in any of the private B.Ed. Colleges kept in free category, all seats are in the category of payment seats. The fees prescribed in Government and Government aided Colleges is to the extent of Rs. 3,000/- excluding certain reserved categories. While in private B.Ed. Colleges, the fees prescribed is to the extent of Rs. 12,500/- for open category candidates and Rs. 9,500/- for the candidates belonging to Scheduled Caste and Scheduled Tribes, As per the ratio laid down by Supreme Court in Unni Krishnan's case (cited supra), a free seat means a seat available in unaided private Colleges on payment prescribed for Government or Government aided College. Non-providing for a free seat in any of the unaided private Colleges which ignores the interest of the weaker sections and the principle of commercialisation, which is deprecated by the Supreme Court, is followed in the present case.

37. In the affidavit in reply filed on behalf of the State on 6th July, 1995, it is categorically mentioned that in B.Ed. Colleges, generally middle class candidates take admission for the said course. In fact, so many candidates from poor and lower middle class apply for B.Ed. course with a desire to enter into the profession of teaching. Providing free seats in private Colleges is a precondition as per Unni Krishnan's case (cited supra), which alone may protect the commercialisation of education and also may protect the interest of the weaker section, by making more seats available by paying the same fees as is prescribed in the Government Colleges. During the course of arguments, an affidavit came

to be filed by Joint Director of Higher Education, Aurangabad Region, Aurangabad, on 6th July, 1995, indicating that the Government has an open mind for the implementation of the judgement of Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , as regards the payment and free seats in private B.Ed. Colleges. This aspect is not taken into consideration in respect of B.Ed. Colleges; when, in fact, for this year in private unaided Medical and Engineering Colleges, the Scheme of free and payment seats is carved out. It only shows lack of co-ordination between different departments of the Government.

38. We may refer here, at least, to the admission of Old Marathwada University. In the past, private B.Ed. Colleges were required to admit 80% of students through the University channel and 20% of seats were kept in the hands of Management where the admissions were granted irrespective of any merit and without there being any common merit list prepared by the Management. Probably such system was followed in other Universities also for sometime in the past. Restrictions on private Colleges is not a new innovation. But by different Government Resolutions and by the ordinances of the Universities, the Government had itself in past, had placed various restrictions on the private Colleges while granting admissions. The opinion of the Management has no bearing on the question of free seats. The opinion of the Management may be sought for fixing the fee. As to how many free seats and how many payment seats are to be made available cannot be dependent on the sweet-will of the Management. But it will be solely dependent on the policy of the State Government and this policy is to be followed in the light of the scheme prescribed by the Supreme Court in Unni Krishnan's case (cited supra). Now, we are told, that for next year, the Government will provide for free seats in private unaided B.Ed. Colleges. We, therefore, feel that not providing free seats in private unaided Colleges is contrary to the ratio laid down by the Supreme Court in Unni Krishnan's case (cited supra).

39. There are other arguments advanced regarding the physically handicapped candidates. Though there is reservation prescribed for physically handicapped candidates in the rules, in the matter of fees, they are discriminated from other reserved categories, such as, Scheduled Caste and Scheduled Tribes. In Government and Government aided Colleges, the candidate belonging to Scheduled Caste and Scheduled Tribe is not required to pay any fees. But such exemption is not given to physically handicapped candidates. Similarly, in unaided Private College, the fees prescribed for candidates belonging to Scheduled Caste and Scheduled Tribes is Rs. 9,500/-. The physically handicapped candidate in this category also will be required to pay same fees as in the open category. Shri Gangapurwala contended that there are certain concessions given to the physically handicapped persons by way of monthly scholarship. We fail to understand as to how that distinction can be allowed to take effect when such scholarships are also granted to the candidates belonging to Scheduled Caste and Scheduled Tribe categories. When in all other respects the physically

handicapped persons are treated on par with other reserved category candidates we fail to understand, that this exclusion is not allowed to physically handicapped persons. We, therefore, feel that the physically handicapped candidates are also entitled to the same exemption of fees as that of candidates belonging to Scheduled Caste and Scheduled Tribes.

40. There is another point based on discrimination made between the graduates obtaining first degrees from Agricultural Universities and graduates obtaining degrees from the Universities which are party to this petition. There is further discrimination qua. Home Science, Graduates with Home Science from the respondents - Universities are entitled to get admission to B.Ed. Course this year. While Graduates with Home Science obtaining first degree from the Agricultural Universities in the State are not even allowed to apply for admission to B.Ed. Course this year. It is admitted position, that till last, both, Agricultural Graduates as well as Graduates from Agricultural Universities with Home Science were allowed to appear and get admission to B.Ed. Course. This year, this change is made and the Graduates from Agricultural Universities even with Home Science are not entitled to apply and get admission to B.Ed. Course. From the statements made in the affidavit in reply, the discrimination is sought to be justified on two points; that the subject of Home Science in Agricultural Universities is not subject for teaching in Schools and on the ground that the subject of Home Science in Agricultural Universities is agriculturally oriented. We have gone through the syllabus of these respondents - Universities and the Agricultural University. We do not find any justification for the discrimination. As the Horticulture, Animal Husbandary, Fishing Ponds in the houses or in the open space surrounding the houses, the Gardening, the Food Processing, the maintenance of the food, vegetation, etc. being provided in both the Courses. Merely because the Home Science subject in Agricultural Universities are taught and/or agriculturally oriented is no ground for denying admission to the candidates who obtain degrees with Home Science from Agricultural Universities. In many cases, the agriculturally oriented B.Ed. would be more preferable than other graduates. The discrimination made has no nexus with the object to be achieved. The discrimination is violative of Article 14 of the Constitution of India.

41. So far as the Agricultural Graduates are concerned, in the rules for last year, the Graduates from Agricultural Universities were excluded for admission to B.Ed. Course. But when the petitions challenging the discrimination in this regard came up for hearing before Nagpur Bench and Aurangabad Bench of this Court, both Nagpur University and the old Marathwada University conceded that they will consider the applications made by the Graduates from Agricultural Universities for admission to B.Ed. course. We feel, that there is nothing in the affidavit in reply to contradict as to why for this year the Agricultural Graduates were not allowed to seek admission to B.Ed. Course, when in past, such concession was given in their favour. There are certain subjects in Secondary Schools which deal with agriculture. There are Agricultural Schools and Secondary Schools in the State. In view of this, we feel, that the discrimination made as against the

degree holders from Agricultural Universities is not proper and cannot be maintained. The discrimination with both, Agricultural Graduates and Graduates with Home Science from Agricultural Universities, has no nexus with the object sought to be achieved and is violative of Article 14 of the Constitution of India. So far as Agricultural Graduates are concerned, it would be open for the State Government to reconsider the matter hereafter and take appropriate decision as per the advice of the experts. We are told, that the Vice-Chancellors and/or Registrars of the Agricultural Universities in the State of Maharashtra were not members of the Committee headed by the Vice-Chancellor of Bombay University on the basis of the reports of which the present rules for admission to B.Ed. Course are formulated. If the Government was really very serious about the Agricultural Graduates and for any reason the Graduates from Agricultural Universities were to be made ineligible for getting admission to B.Ed. Course, then it was all the more necessary to invite Vice-Chancellors and/or Registrars of Agricultural Universities, on the Committee and obtain their views in the matter. The policy decision taken unilaterally by the Committee without consulting authorities of Agricultural Universities in the State is arbitrary and cannot be said to be reasonable and, therefore, again violative of Article 14 of the Constitution of India.

41-A. In respect of the admissions given to the agricultural graduates of Agricultural Universities. Shri Dixit invited our attention to the definition of "Agriculture" given in the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and also from the Maharashtra Agricultural Universities Act, 1983. In the Agricultural Universities Act, the word "agriculture" is defined as follows :

" "agriculture" includes the basic and applied sciences (including technology) relating to soil and water management, crop husbandry (including control of plant, pests and diseases), horticulture, agricultural engineering, animal husbandry, dairying, veterinary, fisheries, marine biology, forestry and also home science, co-operation and marketing relating to agriculture."

Having regard to the definition, it was contended that it is desirable to continue with the scheme of giving admissions to the graduates from Agricultural Universities also. As we have already pointed out, the issue can be considered by the experts in consultation with the Vice-Chancellors and/or Registrars of the Agricultural Universities. The authorities should bear in mind this aspect of the matter also, taking into consideration the subjects taught in the Agricultural Universities.

42. In respect of Urdu Medium, we have already said that no independent application of mind seems to have been made to the problem of Urdu Medium candidates. While framing the rules and applying district-wise reservation, as there are several University areas where there are no Urdu Medium B.Ed. Colleges, this aspect should have been taken into consideration before applying the same Rules. Rules suffer from non-application of mind and, therefore,

arbitrary.

43. One of the most important factors which seems to have been lost sight of by the authorities while framing the rules is in respect of distribution of seats faculty-wise. Presently the seats are distributed on the basis of methods. There are about ten such methods and the seats are distributed method wise. At least in Old Marathwada University, the admissions were given faculty-wise. 50% seats were meant for Graduates in Arts and languages; 40% seats were meant for Graduates in Science and 10% seats were meant for Graduates from Commerce faculty. This distribution was devised on the basis of the admissions which the students were availing of in Xth and XIIth Standard. According to some of the counsel of petitioners as well as counsel appearing for various Universities in the State, the present trend apparent from the admissions sought by the candidates is towards Science. Admissions are granted method wise. The Science Graduates are getting less admissions though the requirement of Science B.Ed. would be more. A chart in respect of University at Aurangabad is annexed to illustrate as to how the admissions based on methods has resulted in discrimination in favour of Arts Graduates. In Science, total seats available are 170 in number and in Mathematics the total seats available are 144. In the method of Mathematics, admission is available to both Science as well as Arts Graduates. Even ignoring that, it can be gathered that about 300 seats are allotted for Science subjects and about 900 seats are allotted to languages and other Arts subjects. It is not possible to consider this aspect in this writ petition as the data and other material in respect of other Universities is not made available to us. So also, there is nothing to indicate that the present trend whether for Arts, Science or Commerce. But the admissions method wise seems to have been mechanically done. This aspect of the matter has to be carefully worked out and the strength of admission to B.Ed. Course shall be dependent on the trend which is available. The qualification of B.Ed. is acquired for the purposes of teaching. If obtaining degree is to be fruitful then this aspect has to be considered carefully. The mechanical working on the basis of 10% to each method may not be desirable. While considering the framing of rules for next year, this aspect shall be borne in mind by the authorities in allotting seats to Arts, Science and Commerce Graduates. These observations are based on the table made available to us. The arguments were advanced in the light of distribution of seats and in the light of trend of students seeking admissions in the Schools and Higher Secondary Schools. We feel, that this aspect is required to be gone into deeply and considered by the proper authorities while framing the rules on the basis of statistics and the trend which can be worked out by the experts in the field. No conclusive opinion, therefore, is possible to be expressed with regard to this.

44. The arguments were advanced as we have held the rules and/or Guidelines to be ultra virus of Articles 14 and 16 of the Constitution of India. The further question remained regarding the admissions which are already granted by different Universities. One fact will have to be borne in mind, that the Bombay University and Swami Ramanand Teerth University, Nanded, have granted

admission to almost all the students in all the categories on the basis of present rules. Pune University, Shivaji University, Dr. Babasaheb Ambedkar Marathwada University and Uttar Maharashtra University have admitted students to large extent. Nagpur University and Amrawati University have not admitted a single student till today. As the results were declared late and thereafter by way of interim relief Universities were directed not to fill in the vacant seats, there are about 13,000 seats available for admission to B.Ed. Course this year. Out of which, practically 8,000 seats are filled in by granting admission to different categories and about 5,000 seats are vacant. This factual aspect will have to be borne in mind. There is another aspect to which our attention was invited. Admissions to M.A., M.Com. M.Sc., etc. are already closed and the candidates whose admissions, if cancelled, would not be entitled to seek admission in other courses, as probably some of them would have been entitled for admission to other courses even on the basis of merits.

45. We feel, that the ends of justice will be met, if looking to the large number of admissions granted and also looking to the fact that none of the candidate admitted is party to the petition and moreover, all the alternatives available for other courses are closed, it is not desirable to set aside all the admissions. We find, that there is no fault with the candidates admitted. They were admitted in accordance with the rules and as implemented by the authorities. If there is any error committed in the procedure while admitting students, the blame cannot be brought to the shoulders of the candidates admitted. In this background, we feel, that it is not desirable to cancel the admissions of the students who are already admitted. This is not an end in itself as there are 5,000 vacant seats. The question is as to how these 5,000 vacant seats are to be filled in. As we have held the rules to be ultra vires, a new scheme will have to be formulated for admitting these 5,000 students. The rules will have to be published before admission of these candidates. This will also call for a long procedure. Therefore, we feel, that the remaining seats until now shall be filled in accordance with the present rules only.

46. From the arguments advanced, it can be gathered that the anomalies in the rules and in working out the merits probably has resulted in causing injustice to the students from different Universities, more particularly so, for the students whose marks for all the three years are counted, whose marks for two years are counted as against the students whose marks for only final year are counted. Without bringing them on common platform, a common merit list is prepared. So, there was justification for challenging the rules.

47. As we are not cancelling the admissions of the candidates who are already admitted, as we are allowing the authorities to complete the admissions of the remaining 5,000 seats on the same footing, we feel, that the ends of justice will be met, if 3% seats are created in favour of the University areas where the marks of only one year i.e. Third Year final examination are taken into consideration. 5% additional seats are created in favour of the candidates from

the University areas where the marks for two years, namely, Second and Third Year Examinations are taken into consideration; and 10% additional seats are created in favour of those Universities where the marks of all the three examinations i.e. First Year to Third Year are taken into consideration. Previously such addition on mass scale was directed at the instance of the State Government for Engineering Courses viz. decision of Division Bench of this Court in the case of Gopinath Govindrao Latpate Vs. State of Maharashtra and Others, .

48. The additional seats so created shall be advertised both by the State Government for each University area and by the Universities. The candidates who have obtained degrees from Agricultural Universities with or without Home Science will also be entitled to apply in the quota of additional seats created. The admissions shall be finalised as against these additional seats purely on the basis of University-wise as in the last year. The additional seats to be allotted to which B.Ed. College will be decided by the State Government and thereafter authorities of the respective Universities in the State shall publish public notification in the newspapers having wide circulation from different University areas. The proportion of reservation shall be maintained in the additional seats also. In case, the reserved quota is not filled in in that category, the same shall be allotted in the open category.

49. The candidates who are selected for admission to B.Ed. Course will not be eligible to apply for admission as against additional seats that will be created.

The candidates who are not selected for admission will be entitled to apply for admission to the additional seats so created.

The candidates who were eligible when the concerned advertisements were previously issued for admission to B.Ed. Course for 1995-96 will be entitled to apply now. The candidates who have acquired first Degrees thereafter will not be eligible to apply for additional seats.

The direction regarding creation of additional seats is only for this year.

Additional seats to be filled in, on or before, 8th August, 1995 by completing the entire procedure by the authorities.

50. Universities and respective Colleges to take additional efforts, if necessary, for allowing the candidates admitted against the additional seats to complete the Course and to appear for the examination along with the candidates already admitted.

51. Rule in Writ Petition Nos. 2389/1995, 2254/1995 and 2610/1995 is made absolute