

(2003) 07 DEL CK 0026

In the Delhi High Court

Case No : CW No. 4502 of 2003 and CM No. 7689/03

Smt. Tara Wati

APPELLANT

Vs

S.C.E.R.T. and Others

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 12, 32
National Council for Teachers Education (Norms and Standards for Teacher Education Programmes) Regulations, 2001 — Regulation 3

Citation : (2003) 4 AD 477 : (2003) 106 DLT 235 : (2003) 71 DRJ 747

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Avinish Ahlawat, in CW No. 4502/2003 and CM No. 7689/03 and Kuldeep Sehrawat and Vinod Sehrawat, in CW Nos. 303, 304, 306, 388 and 417/2003 and CM Nos. 378, 379, 381 and 575/200, for the Appellant; Avinish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.

CW 4502 of 2003

1. Rule.

2. By consent of counsel for the parties the petition has been taken up for final disposal keeping the urgency and exigencies of the matter in perspective. The factual matrix is not in controversy save for the Petitioner's accusatory assertion that the decision of the Interview Board finding her unsuitable was actuated by mala fides so that less meritorious candidates could be given admission.

3. The Petitioner has applied to the Respondent for admission to its Diploma course in Elementary Teacher Education (ETE) in the Urdu discipline as a Scheduled Caste candidate. She has passed the CBSE Examination held in March/July, 1988. The Petitioner has cleared the Delhi Senior School Certificate

Examination of the Board held in March 1990. It appears that she has also passed the Urdu Course - A offered by the CBSE, Delhi Secondary School Examination, 2003, having obtained forty three per cent (43%) marks. The Result of the Entrance Test 2003 conducted by the Respondent indicates that she has secured the 3rd position in the category -"SC" Provisional Select List of Urdu". However, she has not been given admission purportedly because she was found unfit by the Interview Board. The Final List reads thus:

URDU E.T.E. FINAL RESULT

"U -EFA *139224 (16)

U-GEN 139172(1) 139100(2) 139104(4) 139054(6) 139121(6) 139140(6)
139261(6) 139151(10) 139208(10) 139970(58)

U-ST * 139270(13) * 139119(15)

U-NCC 139206(2)

U-OBC 139173(1) 139099(2) 139076(3)

U-SC 139110(4) *139165(12) *139135(13)

U-PH * 139170(18)"

*No SC candidates were available and 2 seats were converted to general category. * No EFA candidates were available and 1 seat was converted to general category. * No ST candidates were available and 2 seats were converted to general category. * No PH candidates were available and 1 seat was converted to general category.

NOTE: Candidates in the EFA category will be informed later."

4. The relevant contents of the Brochure or Information Bulletin for the ETE Diploma conducted by the Respondents are reproduced below -

"II. Admission Procedure

Eligibility:

1. Qualification

(a) Candidates seeking admission to ETE Course must have passed Senior Secondary Examination (10+2) of CBSE, Delhi or its equivalent examination of any other recognized board/University, from the schools of National Capital Territory (NCT) of Delhi only.

(b) Candidates must have secured at least 50% marks in aggregate (including one language) in Senior Secondary Examination (5% relaxation of marks is allowed for candidates applying under the categories Scheduled Caste, Scheduled Tribes and Physically Handicapped only).

(C) Candidates who appeared in 10+2 Examination and are expecting 50% or

above marks may also apply subject to submission of their final result at the time of interview. In case they are not able to submit their marksheet at the time of interview, their candidature will not be considered.

(D) Candidates opting for Urdu/Punjabi teaching must have passed Secondary or Senior Secondary examination with Urdu. Punjabi as one subject from the schools in National Capital Territory (NCT) of Delhi only.

.....

3. RESERVATION

There is provision for reservation of seats for following categories, If the requisite number of candidates are not available in any reserved category, the seats available on account of shortfall would be open to General Category.

- a) 15% for Scheduled Caste(SC) candidates.
- b) 7.5% for Scheduled Tribes (ST) candidates.
- c) 15% for Other Backward Classes (OBC) candidates.
- d) 3% for Physically Handicapped (PH) candidates.
- e) 2% for Education For All (EFA) Volunteers.
- f) 1% for NCC Cadets.
- g) 2% for Sports Men/Women.
- h) 1% for Wards of Ex-servicemen
- i) 2% for Wards of Delhi School Teachers.
- j) 1% for wards of regular employees of Delhi DIETs and SCERT (Only for seats in DIETs)

Following conditions must be satisfied for availing reservation under aforesaid reserved categories. In case a candidate selected for interview under reserved category fails to produce certificates of that particular category, he/she will not be allowed to appear in the Interview and his/her candidature for admission in ETE will be cancelled.

- i) SC and ST Candidates

A candidate belonging to SC and ST category will be required to submit his/her category certificate from the competent authority."

VIII. SELECTION PROCEDURE

For Selection of Students to ETE course following procedures will be adopted:

- (i) Admission to the ETE course will be done on the basis of merit in Written Entrance Test and Interviews. No candidate will be admitted to the ETE course

without the recommendation of Interview Board.

(ii) The written entrance test will be of 200 marks. In case of Urdu/Punjabi it will be of 230 marks. The medium of Entrance Test is English and Hindi. Mere appearing in entrance test does not make the candidate eligible for interview or for admission in ETE course.

(iii) Candidates will be shortlisted for interviews strictly on the basis of their performance in written test. The number of candidates to be called for interview will be double the number of total seats available.

(iv) A Candidate not recommended by Interview Board will not be considered for admission to ETE course irrespective of his/her merit in Entrance Test. The Interview Board will record a Speaking order dully supported by evidence/proof. No representation will be entertained in this regard.

(v) Selection of all candidates for appearing in the interview on the basis of merit in Entrance Test shall be provisional. At the time of interview the selected candidate shall produce following certificates in the original:

- a. Certificate of Secondary School Examination (Class X) for Date of Birth.
- b. Marksheet of Sr. Secondary School Certificate Examination or its equivalent examination.
- c. Certificate of reserved category from competent authority in candidate's own name.

In case a candidate fails to produce any of the aforesaid certificates in original or is found not eligible for ETE course as per Eligibility Criterion at the time of Interview, he/she shall not be allowed to appear in the interview and his/her candidature for admission in ETE course shall be cancelled. No further correspondence in this regard shall be entertained.

Following certificate from the Principal of the school from where the candidate has passed/appeared in 10+2 Examination.

Certified that Mr./Ms._____S/D of Shri._____ has been bonafide student of this school and passed/appeared in 10+2 Examination bearing Examination Roll Number _____. The School is Govt./Govt.Aided/Recognised unaided and is located in the National Capital Territory of Delhi.

Signature of Principal.....

Name of the Principal.....

Seal of the School.....

(vi) A Consolidated Merit List of the candidates prepared on the basis of Entrance Test and Interviews will be displayed at seven DIETs and SCERT.

(vii) The appearance of the name of a candidate in the Consolidated Merit List does not guarantee that the candidate will be admitted into the ETE course, but only indicates their eligibility.

(viii) Candidate will be called in order of merit (Category- wise) to the all allotment/admission counter at DIET, Moti Bagh, New Delhi on the scheduled dates and his/her option for DIET will be asked for.

(ix) The admission will be made depending upon the number of seats available in the particular DIET in the particular category.

(x) The candidate will be required to bring original certificates and admission fee at DIET Moti Bagh, New Delhi-110021 in the notified date of allotment and admission in ETE course. He/she will be required to deposit fee in cash and the original certificates on the same day at Examination Cell for getting admission in allotted DIET.

Any candidate who does not appear at the Allotment/Admission counter of Examination Cell, on the specified date for allotment and admissions in DIET or does not deposit fee and certificates for admission, shall forfeit his/her right for admission to ETE course. His/Her candidature for admission to ETE course will be cancelled and seat will be allotted to next candidate in order of merit. No correspondence in this regard shall be entertained."

5. The Guidelines issued by the Respondent pertaining to Interviews of candidates for Admission to ETE Course (Session 2002-2004) read thus:

"STATE COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING

INTERVIEWS OF CANDIDATES FOR ADMISSION TO ETE COURSE

(SESSION 2002-2004)

GUIDELINES

DISTINGUISHED MEMBERS

I Welcome you all at the DIET Moti Bagh New Delhi & express my sincere gratitude to you for accepting our request to act a chairmen/members of Interview Board, I am sure that with the help of your expertise SCERT will be able to complete the process of selecting trainees for 8 NTTs Teacher Training Institutes.

910 candidates are to be admitted to the two year Diploma Course in Elementary Teacher Education (ETE) on the basis of written entrance test and interviews. This year 58000 candidates appeared for admission to ETE course. The written Entrance Test was conducted by the Examination Cell at 144 Examination Centres on 28th July, 2002.

The written Entrance Test was based on the following dimensions;-

1) General Mental Ability 2. General Awareness 3) Teaching Attitude 4. Teaching Aptitude 5) English 6. Hindi 7) Social Science 8. Science 9) Mathematics

Based on the merit in Entrance Test, we have invited 2080 candidates under various categories for the interviews. This number is roughly double the total seats available in ETE course. Though interview carries no mark, an interaction with the candidates at this stage is very important. During the dialogue with the candidates, interviewers have to assess their suitability as a teacher. Candidates have been called for interview as per the order of their merit in the written tests. The interviewers may recommend the rejection of a candidate on the basis of any one or more of the following reasons.

- (i) Violent behavior
- (ii) Impediments in Communication skills
- (iii) Impersonation
- (iv) Very poor general awareness
- (v) Negative attitude towards teaching profession
- (vi) Any market propensity for anti child behavior
- (vii) Lack of professional ethics
- (viii) Poor Teaching Aptitude

The Interviews will be conducted by Interview Boards in four sessions.

First Session 10.00 a.m. To 12.00 noon Second Session 12.00 noon to 02.00 p.m. Third Session 02.30 p.m. to 04.30 p.m. Fourth session 04.30 p.m. to 05.30 p.m. Around 10 candidates are scheduled to be interviewed by each interview board in one session.

Interview Board members are requested to hand over the result of Interviews of each session along with interview slips of the candidates to the committee member after the completion of session.

Once again I thank you for sparing your valuable time for the conduct of Interviews.

(DR. JANAKI RAJAN)

DIRECTOR"

6. It cannot be denied that the Respondent has been created under the aegis of the National Council of Teacher Education (NCTE). The Foreword of the Respondent's Brochure itself makes bold states that the "ETE is a carefully designed programme based on NCTE guidelines to prepare teachers at the elementary level for the schools of Delhi". NCTE came into existence as a consequence of the passing of the National Council for Teacher Education Act,

1993 (Act 73 of 1993). Section 32 thereof empowers the Council, i.e., NCTE, to make regulations not inconsistent with the provisions of the Act, inter alia, Section 12(e), which contemplates and enjoins the Council to "lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum". It cannot be gainsaid that it is essential for any Authority which has been created by and is subordinate to the NCTE, such as the Respondent SCERT, to operate within the bounds and parameters set out for the NCTE itself. If SCERT adopts its rules of functioning which transgress such boundaries. Those rules or practice or procedure would be illegal because of the vice of inconsistency, or excessive delegation, or their being ultra vires. The criteria adopted by the Respondent must mandatorily be structured upon the norms and standards established by its parent body, namely, NCTE. The norms and standards set down by the NCTE which have been shown to me are in Appendix I to NCTE (Norms and Standards for Teacher Education Programmes) Regulations, 2001 comprising four Regulations only, of which the following has been emphasised upon.

"3. Eligibility

- a) Candidates with at least 45% marks in the senior secondary examination (+2), or its equivalent, are eligible for admission.
- b) Admission should be made either on the basis of marks obtained in the qualifying examination or in the entrance examination conducted by the State Government, as per the policy of the State Government.
- c) There shall be reservation of seats for SC/ST/OBC, Handicapped, Women, etc. as per the rules of the concerned State Government.

7. The first question to be answered in these petitions is whether the Respondent is empowered to conduct any interview at all. The argument put forward on behalf of the Petitioner is that the eligibility criteria formulated by the NCTE does not mention the holding of an interview which could be conducted only with the purpose of verifying the Certificate of the candidate concerned. It must immediately be clarified that Regulation 3 deals with eligibility for being considered for admission to ETE. It does not contemplate the entire selection process. They are distinct of each other. It is more than likely, keeping the fact that there are always far greater number of persons who apply for any post/course than the positions available, that all eligible candidates would eventually not be successful. Regulation 3 does not circumscribe the selection procedure to be followed and it does not rule out or prohibit the holding of an interview. The Brochure, on which both sides must rest their case, in paragraph VIII (extracted above) envisages the holding of an interview. It explicitly clarifies that a candidate not recommended by the Interview Board will not be considered for admission to the ETE Course irrespective of his/her merit in the Entrance Test. Had the NCTE explicitly stated that no interviews would be conducted, the

situation would appreciably change. But no such regulation has been disclosed. I also find no foundation for the extraordinary argument that the Interview Board shall only scrutinise the candidates eligibility documents. Reliance on the decision in *K. Anand v. Convenor, Engineering Agricultural Medical Common Entrance Test, 1986, Hyderabad* and *anothers, 1990 AIEC 156*, is wholly misplaced since the facts are different in essential features to those before me. The Petitioners cannot also be permitted to approbate and reprobate in that they cannot attempt to rely in piecemeal on the Guidelines of the State Council of Educational Research and Training (SCERT) extracted above. The Guidelines indicate that the interview carries no marks and is intended to facilitate an interaction with the candidates in order to assess their suitability as a Teacher. The Guidelines, however, spell out the scope of the interview. The Interview Board cannot travel beyond the frontiers established in the Guidelines and their assessment of the candidate must be in the context of the eight aspects or personality traits adumbrated down in the Guidelines. This will assume great importance in the decision of the present case.

8. Learned counsel for the Respondent contended that in rejecting the Petitioner, the Respondents have not transgressed any of the conditions or purposes of the interview not carrying any marks. It is her argument that the standings in the Merit List remain unaffected by the outcome of the Interview. No marks are allotted and, Therefore, the merit of the candidate does not undergo any inter se change or alteration. Candidates are interviewed strictly in the precedence in the Merit List. On clearing the Interview, the candidate who is higher in the Merit of the Entrance Test would always precede the next candidate. However, if the particular candidate is found unsuitable by the Interview Board, the effect is not that he/she would drop down in the Merit List, but that the candidate would become disentitled altogether to admission or consideration. Ms. Ahlawat has relied on the decision of the Hon'ble Supreme Court in *Mehmood Alam Tariq and Others vs. State of Rajasthan and Others, 1988 (2) SLR 595* where the requirement of a candidate having to secure minimum 33 per cent marks in the viva voce was upheld by the Apex Court. This decision has been sculpted by her to apply to the facts of the present case in the fashion that since a person who has received only 30 per cent marks in the viva voce could be failed irrespective of having received even the highest marks in the written test, there can also be no obstacle in making the Interview the sole criteria for success. I am unable to accept this argument. A larger Bench of the Apex Court has pronounced in *K. Prabhakara Rao Vs. Union of India (UOI) and Others*, that the fixation of a minimum percentage of marks for the viva voce as illegal. What we are confronted with in this case is not minimum marks earned by a candidate in the Interview. If the Respondents understanding of the Guidelines is to be accepted it would tantamount to this Court giving it imprimatur only to the performance of a candidate in the Interview, it being the sole criteria. No doubt there are precedents where the Courts have not found anything irregular or illegal in treating the written test as a qualifying consideration. In such cases the relevant

rules must clearly spell it out and there should be no room for ambiguity. The decision of the Apex Court in *Praveen Singh Vs. State of Punjab and Others*, immediately comes to mind. In that case the recruitment process was held to be arbitrary where it totally ignored the marks obtained in the written examination, and made the selection wholly on the basis of viva voce. No doubt the Apex Court carved out an exception; in that it observed that in the event the interview was to be the sole criteria and the written test has to be treated as a qualifying test, the Public Service Commission ought to have clearly stated so. It applied its previous decision in *Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others*, . This is what was stated by their Lordship in *Praveen Singh's* case (supra):-

"8. Relying upon the aforesaid, however, the High Court observed that even though the rule is not properly articulated but on a rational interpretation, there is no escape from the conclusion that passing of the written test with 33% marks in each paper and 45% marks in aggregate does not ipso facto entitle a candidate to be called for viva voce/interview. The High Court however proceeded on the right of the employer for short listing and screening since the same has been recognised by the law Courts keeping in view the ground reality, as it is otherwise a well-nigh impossibility for the selecting agency to interview all the candidates. The High Court also took into consideration the number of candidates and the time that shall be otherwise consumed in the event of interview of a large number of people and as such the High Court came to the conclusion that the Punjab Public Service Commission was justified in adopting a rational yardstick for short listing the number of candidates for viva voce test and no arbitrariness or illegality can be attributed therein and the factum of judging the merits of the candidates on the basis of viva voce test being prevalent in the Punjab Public Service Commission since the year 1978 has also been taken into consideration by the High Court. While it is true that the administrative or quasi judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fairplay, good conscience and equity. This Court in the case of *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, did recognise the undetectable manipulation of results being achieved by remote control tactic and masked as viva voce test resulting (in) the sabotaging of the purity of proceedings. This Court held "interviews as such are not bad but polluting it to attain illegitimate ends is bad."

9. What does *Kulshreshtha's* case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly a significant factor in the matter of appointments It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may

lead to "sabotage of the purity of the proceedings". A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, , this Court however in no uncertain terms observed : There can Therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and taints and in fact test the man himself and is Therefore, regarded as an important tool along with the written examination.

10. The situation envisaged by Chinnappa Reddy, J. in *Lila Dhar Vs. State of Rajasthan and Others*, on which strong reliance was placed is totally different from the contextual facts and the reliance thereon is also totally misplaced. Chinnappa Reddy, J. discussed about the case of services to which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held that "interview test may be the only way subject to basic and essential academic and professional requirements being satisfied". The facts in the present context deal with Block Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview only, having regard to the nature and requirement of the concerned jobs. In any event, the Service Commission itself has recognised a written test as also viva voce test. The issue Therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written examination can be deemed to be a mere qualifying examination and the appointment can only be given through viva voce test a plain reading of the same however would negate the question as posed.

11. A close look at the qualification as prescribed and the information sheet, however, in our view would depict otherwise. The qualification prescribes that the candidates will be required to qualify for the following written test at the time of recruitment and the qualification standard in the test has been fixed to be at 33% pass marks in each paper with 45% however in the aggregate and paragraph 4 of the Information sheet, as above, in no uncertain terms records that no candidate shall be eligible to appear in the viva voce test unless he obtain 33% marks in each paper and 45% marks in the aggregate.

12. Reading the two requirements as above, in our view question of having the written test written off in the matter of selection does not and cannot arise. Had it been the intent of the Service Commission then and in that event question of there being a totality of marks would not have been included therein and together with specific marks for viva voce test, would not have been there neither there would have any requirement of qualifying pass marks nor there would have any aggregate marks as noticed above.

13. Further, in the event, the interview was the sole criteria and the written test being treated as qualifying test, the Public Service Commission ought to have clearly stated that upon completion of the written elimination test, selection would be made on the basis of the viva voce test only as is available in the

decision of Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others,"

9. The Constitution Bench of the Hon"ble Supreme Court, in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , made the following pronouncements, which in my view sound the death knell to the contention that an interview can be the sole determinate criteria for selection of any candidate.

"It is Therefore not possible to accept the contentions of the petitioners that the oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission of colleges or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification."

10. Let me assume that the norms and standards followed by the Respondents is in consonance with those set down by the NCERT. I am, however, in no doubt that they are wholly illegal inasmuch as it is not clearly indicated that admission will be granted solely on the outcome of the interview. The statement that the interview shall carry no marks clearly creates confusion and ambiguity. Further confusion is created by stating that a consolidated list shall be prepared on the basis of Entrance Test and Interview. This plainly indicates that the interview shall not be the only determinate factor in the success of a candidate for admission to the ETE Diploma course. The power of the Interview Board to reject a candidate on the so called test of fitness/non-fitness vests the Board with arbitrary and untrammelled power to reject any candidate regardless of how he has fared in the written Entrance Test. We must also keep in perspective the fact that the selection is not in respect of a Public office where the personality plays a pivotal part, but to the selection of a person to a Diploma course in elementary teaching, and the course is intended to impart teaching to such persons.

11. It is not in dispute that the Petitioner was interviewed on two occasions. It has been contended by counsel for the Petitioner that this was wholly irregular but I cannot accede to this extreme position. The second Interview Board was comprised of a larger number of persons. Had the Petitioner been recommended by the first Interview Board I might have thought otherwise. It has also been contended by the Petitioner that it was essential that a Scheduled Caste Interviewer should have been part of the Interview Board. In the view that I

have taken I need not respond to this contention. What is of great importance is that the reason which has weighed in the mind of the Interview Board is that the Petitioner did not possess adequate knowledge of Urdu. It has been emphasised that each candidate was made to carry out a translation into a written Urdu and that both the Interview Boards found the Petitioner lacking in this exercise. In the first place this completely negates the utility and efficacy of the entrance exam which is conducted by the Respondent itself. This is impermissible. Secondly, it renders superfluous and ignores the factum of the Petitioner having obtained 43 per cent marks in the Urdu Course-A in the Delhi Secondary School Examination, 2003 of the C.B.S.E. Where extraordinary powers are assumed by the Interview Board, namely, of total rejection of a candidate on the basis of performance in the interview, these factors are difficult nay impossible to ignore. India is the repository of learning from the most ancient times but today we are a nation fixated with holding examinations. C.B.S.E. and ICSE Certification is not enough to get our students into most colleges and IITs; and University Degrees are of little value for entering post graduate courses within the same university. In the bargain, we are reducing our students into examination taking automations and there is a total shift from development of a comprehensive personality.

12. Most importantly, the reasons which have been given to justify and sustain the Petitioner's rejection in the interview, do not fall within the confines of the eight conditions or qualities which were set down for the Interview Board to investigate into. These circumscribe the limits within which the Interview Board should examine a candidate. Rightly and understandably, knowledge of the subject in which the Petitioner has already succeeded in an Entrance Examination, is not one of the eight facets spelt out in the Guidelines. In the Petitioner's case the Interview Board has transgressed the boundaries set for it.

13. Apart from the above, the Petitioner has also contended that the effort of the Interview Board was to reject Scheduled Caste candidates and to fill up the vacancies with candidates in the General Category. This argument is, prima facie, sound and attractive inasmuch as only one Scheduled Caste candidate, who was fourth on the Merit List in the Entrance Test, has been successful in the final result. The two unfilled and vacant seats have been converted to the General Category. It is pointed out by Ms. Ahlawat that the Brochure itself mentions that if candidates falling in the reserved categories were not available, the seats could be converted to general categories. I find it singular that in most of the reserved categories, as a consequence of the decision of the Interview Board, candidates were found unsuitable and the posts were allotted to candidates of the General Category. This seems to indicate a latent bias if not a conscious prejudice of the Members of the Interview Board. Where reservations are carved out the Authorities concerned should make every effort and endeavor to ensure that they are filled up by candidates falling within that category. In *Preeti Mittal etc. etc. v. Gaganjot Kaur Saira & Ors. etc. etc.* 1999 (2) SLR 194, the Apex Court went to the extent of holding that if scheduled caste candidates are not available in the

All India Pool (15%) those seats should go to scheduled caste candidates in the Chandigarh Pool (85%) of admissions to the MBBS Course. In the case in hand, the reverse has been done, i.e. General category candidates have been given admission by holding scheduled caste and other reserved category candidate who have found place in the Merit List 'unsuitable'. If students in the scheduled caste category are expected to be on par with others, there would scarcely be any justification for the creation of reservations. The Respondent's action is clearly unconstitutional.

14. In this analysis it is my opinion that while it is open to the Respondents to hold an interview, it is not permissible for the Board to reject a candidate only on the basis of his performance before the Interview Board. If this extreme power is to be exercised then it is essential and incumbent on the Authorities to clearly state in the brochure/circular/literature that the Interview Board has untrammelled power either to clear or to reject any candidate. The test of bona fides will always fall heavily on the Board where such limitless power is assumed by it. The burden of proving that it has acted in a fair and non-arbitrary manner will lie on the Authorities concerned. In the present case this burden has not been discharged.

15. It has been strongly contended on behalf of the Respondents that since the Petitioner has participated in the selection process she is disentitled to challenge it. Reliance has been placed on *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, . I acceded to a similar argument while dismissing CWP No. 564 of 2001 entitled *Dr. G.D. Sharma v. Union of India & Others*, by my decision dated October 11, 2001. In that decision the Petitioner was aggrieved with the constitution of the Selection Committee, whilst in the present case the Petitioner has assailed the manner in which the Respondents have implemented their own Rules, Regulations and Procedure relating to admissions. Had these Rules unequivocally and explicitly stated that the Interview Board had the complete power to reject a candidate who had otherwise fared well in the written test, the entire procedure may have been challenged. The Petitioner in the present case could legitimately have expected to get admission if she possessed the eight character qualities spelt out by the SCERT itself. I am also of the considered opinion that the decision of the Hon'ble Supreme Court in *T.M.A. Pai Foundation and Others Etc.Etc. Vs. State of Karnataka and Others Etc.Etc.*, and *St. Stephen's College v. University of Delhi*, AIR 1992 SC 1636 have no application to the controversy before this Court. Firstly, the Respondent has the right to interview candidates but it does not possess untrammelled powers of rejection solely on the performance of persons in the interview. Secondly, Articles 29 and 30 are not attracted in the case of SCERT, and, Therefore, rejection of a candidate for reasons of protecting an all-India character, as well as a minority institution, have no role to play. The decision in *Madan Lal's case (supra)* as well as in *Mohan Lal and others Vs. State of Himachal Pradesh and others*, and *Union of India and Another Vs. N. Chandrasekharan and Another*, are, Therefore, distinguishable.

16. The Writ Petition No. 4502/2003 is allowed. The Respondents are directed to grant admission to the Petitioner in ETE Diploma Course (for the year 2003-2005) forthwith and not later than five days from today.

Writ Petition Nos. 388/2003, 304/2003, 303/2003, 306/2003 and 417/2003

17. I must record my appreciation for the assiduous, erudite and tenacious arguments addressed by Mr. Sehrawat in these writ petitions, which have greatly influenced the conclusions reached by me in Tara Devi's case. However, Ms. Ahlawat has explained that after the regular Interviews were concluded as per the announced schedule, in or about August 2002, a second round was conducted in November and December 2002, in compliance with Orders passed by this Court in other Writ Petitions. As a consequence, for the academic year 2002-2003 six extra students were taken in the EFA category to which the four Petitioners in CWP Nos.303/03, 304/03, 306/03 and 417/03 belong. All these Petitions have been filed after the conclusion of the second round of interviews, by which time over a quarter of the course had already been covered.

18. Mr. Sehrawat has cited Punjab Engineering College, Chandigarh vs. Dharminder Kumar Singhal and Others, 1990 AIEC (75) in which a Three Judge Bench of the Apex Court made the following pronouncements, and inasmuch as the decision of two learned Judges in State of Punjab and others Vs. Renuka Singla and others, , without reference to the former case contain a contrary observation, as contended by Ms. Ahlawat, the earlier decision would have to be followed:

"6. It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot met the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made.

7. Since in this case eight students, and perhaps sixteen were wrongly admitted, we direct that, over and above sanctioned strength for the next academic year commencing in July 1983, sixteen additional seats shall be created to which sixteen students shall be admitted to the Punjab Engineering College from the lists which were prepared for the 1982-83 academic year. These sixteen seats shall be apportioned in an equal measure between the local students belonging to Chandigarh and the general group of students belonging to areas outside Chandigarh. That is to say, eight students will be admitted from the Chandigarh List of students and eight from the General List of students, which were prepared

for the last academic year, viz., 1982-83.

8. The only question which survives is whether the sixteen writ petitioners should be admitted to those sixteen seats or whether admission to those seats should be made strictly in accordance with merit. We are unable to accept the submission made by the petitioners that they should be preferred for admission irrespective of merit. The circumstance that they filed writ petitions in the High Court but others similarly aggrieved did not, will not justify the granting of admission to them by ignoring those others who were higher up in the merit list.

9. When a similar question arose before this Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, , the Court directed the State Government to admit thirty more students Krishna Iyer, J. observed (at p.776 of AIR):

"The selection of these 30 students will not be confined to those who have moved this Court or the High Court by way of writ proceedings or appeal. The measure is academic excellence, not litigative persistence. It will be thrown open to the first 30, strictly according to merit measured by marks secured."

In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , the State Government, the College, and the Society which was running the college, all agreed before this Court that the best fifty students out of those who had applied for admission for the academic year 1979-80 and who had failed to secure admission, would be granted admission for the academic year 1981-82 and that the seats allocated to them would be in addition to the normal intake of students in the College. In *Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others*, , after allowing the writ petitions of candidates who were wrongly denied admission to the Medical Colleges, it was observed by one of us. Pathak, J., that (at p. 1014 of AIR):

"The candidates who will be displaced in consequence have already completed a few months of study and in order to avoid serious prejudice and detriment to their careers it is hoped that the State Government will deal sympathetically with their cases so that while effect is given to the judgment of this Court, the rules may be suitably relaxes, if possible by a temporary increase in the number of seats, in order to accommodate the displaced candidates".

The authorities were directed by this Court to fill up the additional vacancies "on the basis of open merit."

10. Following these decisions, we direct that admission to the 16 additional vacancies for the academic year 1983-84 shall be made in accordance with merit on the basis of the lists which were prepared for the academic year 1982-83 for the Chandigarh group of students and the general group of students."

19. Principles of laches, to my mind, impede the grant of any relief in these Writ Petitions. These Petitioners would have to be accommodated either midway the course or in the academic year 2003-2004, in respect of which third parties will be affected. In the former course such an approach would run counter to the

decision of the Hon"ble Supreme Court in Medical Council of India Vs. Madhu Singh and Others, , in which a Two Judge Bench of the Hon"ble Supreme Court has deprecated midsession admissions.

20. Regretfully, but for all these reasons, the Writ Petition Nos.388/2003, 304/2003, 303/2003, 306/2003 and 417/2003 are dismissed.

21. A copy of this Order be given dusty to learned counsel for the parties.