

(1992) 05 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1586, 1869, 2420, 2540, 2541, 2542, 2543, 2568, 2701, 2729, 2731, 2791, 2902, 2939, 2942, 3008, 3097, 3117, 3128 and 3626 of 1992

Tara Chand and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 RLW 183 : (1992) 2 WLC 308 : (1992) 1 WLN 486

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.L. Tibrewal, J.—All these writ petitions relate to admission in B.Sc. (Nursing) Part III Examination, as such, they are disposed of by a common order.

2. The courses of study leading to B.Sc. (Nursing) Degree consist of four academic year i.e. Part I, Part II, Part III and Part IV. Ordinance 299-V-3 of the University of Rajasthan provides for admission to Courses of Study in B.Sc. (Nursing). It reads as under:

Order 299-V-3:

(a) A candidate who has completed the age of 17 years at the time of admission or will complete the age on or before 31st December of the year of the admission to B.Sc. (Nursing) Part-I Course and passed the First Year Science Examination of Three Year Degree Course (Pass/Honours) of the University or an examination recognised by the University as equivalent thereto in all the compulsory subjects and the optional subjects of medical group (Physics, Chemistry and Biology) including English as one of the compulsory subjects with a minimum of 45% marks (40% for natural born Scheduled Caste and Scheduled Tribe candidates) in the aggregate of English and Science subjects (Physics, Chemistry and Biology)

taken together at the qualifying examination shall be eligible for admission to the B.Sc. (Nursing) Part 1 Course:

Notes:

(i) Where the seats reserved for Scheduled Caste and Scheduled Tribes students in the State can not be filled for want of requisite number of candidates fulfilling the minimum requirements prescribed for the State, then the vacant seats be filled up on all India basis with Scheduled Caste and Scheduled Tribes candidates getting not less than the aforesaid minimum prescribed pass percentage.

(ii) A candidate who has passed in the compulsory subjects of General Hindi/ General English and the optional subjects of the medical group (Physics, Chemistry and Biology) of the First Year Examination of the Three Years Degree Course in Science conducted by the University shall be deemed to have passed the First Year T.D.C. (Sc.) Examination for the purpose of this Ordinance.

(b) A candidate who after passing the B.Sc. (Nursing) Part-1 Examination of the University has attended a regular course of study in an affiliated college for one academic year shall be eligible for admission to the B.Sc. (Nursing) Part-II Examination.

(c) A candidate who after passing the B.Sc. (Nursing) Part- II Examination of the University has attended a regular course of study in an affiliated college for one academic year shall be eligible for admission to the B.Sc. (Nursing) Part-III

Examination.

(d) A candidate who after passing the General Nursing Course and Registered Nurse with a recognised body (State Nursing Council) having a minimum of five years regular nursing experience is also eligible for admission to B.Sc. (Nursing) Part-III Examination on producing N.O.C. from State Government. Their Merit will be calculated on the basis of Marks obtained in General Nursing (Final) Year Exam, together with Bonus Marks of one for every 2 years of Completed Regular Services in Nursing exceeding than five years of minimum regular nursing Services upto last 11/2 years of his last Services. Provided such candidates have not completed age above 40 years on or before 31st December of the year of his/her admission.

Note:- That the candidates for B.Sc. (Nursing) Examination 1989 will be examined according to the syllabus which has been proposed by the COC in Nursing at its meeting held on 27th April, 1988. The candidates for the B.Sc. Nursing Part-II, Part-III and Part-IV Examination will be examined in accordance with the syllabus already notified for the respective examinations of 1990. The candidates who will now be admitted directly to the B.Sc. Nursing Part III after passing the General Nursing Course will be examined in accordance with the syllabus which has been laid down by the COC for the B.Sc. Nursing Pt-III Examination 1990 and not according to the B.Sc. Nursing Part III Exam. 1989 and 1990 and Part IV Examination 1989 and 1990 in their cases.

(e) A candidate who after passing the B.Sc. (Nursing) Part III Examination of the University has attended a regular course of study in an affiliated college for one academic year shall be eligible for admission to the B.Sc. (Nursing) Part-IV Examination.

3. The respondent Principal, College of Nursing, Rajasthan, Jaipur, issued/published a Notification No. 91/Adm./461-66 dated June 11, 1991, inviting applications for admission in B.Sc. (Nursing] Four Years Degree Course) Part I, and B.Sc. (Nursing) Part III Examinations. This Notification has been placed on record as Annexure-1.in S.B. Civil Writ Petition No. 2420/92. For the eligibility of a candidate for admission to B.Sc. (Nursing) Part III Examination, available for the candidates having passed the General Nursing Course, the following conditions were laid down in the said notification, viz.:

(i) he should have passed the General Nursing Course and be Registered Nurse with a recognised body (State Nursing Council),

(ii) have a minimum of five years regular nursing experience,

(iii) should be in-service of the Government of Rajasthan, and produce N.O.C. from the State Government,

(iv) passed the First Year Science Examination of Three Years Degree Course of the University or an examination recognised by the University as equivalent thereto in all the compulsory subjects and the optional subjects of medical group (Physics, Chemistry and Biology) including English as one of the compulsory subjects with a minimum of 45% marks (40% for natural born SC/ST candidates) in the aggregate of English and Science subjects (Physics, Chemistry and Biology) taken together at the qualifying examination.

4. A comparison of the eligibility conditions for B.Sc. (Nursing) Part-III Course for inservice registered nurses, as provided in Ordinance 299-V-3 and the notification inviting applications for such admission as provided in Annexure-1, will show that the last condition for the eligibility for such admission, as provided in the notification is not mentioned in the relevant part (d) of Order 299-V-3. It appears that in pursuance to the aforesaid notification, inviting applications for admission to B.Sc. (Nursing) Part-III Course, registered nurses having requisite experience who had passed the General Nursing Course after having passed First Year Science Examination of T.D.C. as well as other registered nurses having requisite experience but had passed the General Nursing Course without having passed First Year Science Examination of T.D.C. had applied for admission in the said course. It is not-worthy that before the session of 1990-91, for admission to the General Nursing Training Course, the requisite academic qualification as Higher Secondary Examination; or, Pre-University Examination; or, Pre-Degree Examination in Science of the Board of Secondary Education, Rajasthan; or, an examination recognised by the University as equivalent thereto. It is not disputed that all the petitioners have passed General Nursing Training Course before 1990 and were having requisite academic qualifications as required for passing General

Nursing Course at that time, It is also not disputed that all of them possessed the requisite experience of five years service in the State of Rajasthan and are registered nurses, but, they were denied admission on the ground that they had not passed the First Year Science Examination of Three Years Degree Course of the University or an examination recognised by the University as equivalent thereto as stated above.

5. On receipt of the application forms, respondent No. 3 scrutinised them for selection of the candidates for the admission to B.Sc. (Nursing) Part-I & III (Trained and Registered Nurses) session 1991-92. The application forms of those trained and registered nurses who had passed First Year Science Examination of Three Years Degree Course of the University or an examination recognised by the University as equivalent thereto, were considered to be eligible for admission. A list of 22 such candidates was notified vide office order dated 1.1.92 who were provisionally selected for the admission. By this office order, they were required to report for their admission to the Principal, College of Nursing, Rajasthan, Jaipur on or before 13.1.92. [A copy of this order has been placed on record as Annexure-8 in S.B. Civil Writ Petition No. 2420/92). Mr. N.C. Goyal, appearing for the respondents, brought to my notice that this list was extended to 29 candidates. Out of the above provisionally select list of 29 candidates, only 17 candidates had taken their admission before 17.2.92 as brought to my notice by Mr. Goyal, which is not controverted by the learned Counsel for the petitioners.

6. One Prakash Chand, who had also applied for B.Sc. (Nursing) Part III Course as Tranined and Registered Nurses for the session 1991-92, and who was not found to be eligible by respondent No. 3 on the ground that he did not pass First Year Science Examination of Three Years Degree Course or equivalent thereto, filed a writ petition before this Court which was registered as S.B. Civil Writ Petition No. 442/92 (Prakash Chand v. State of Rajasthan and Ors.). This writ petition was allowed on 17.2.92 by a Single Bench of this Court and it was held that for the eligibility for admission in B.Sc. (Nursing) Part-III Course for trained and registered nurses, it was not necessary that the applicant should have passed the First Year Science Examination of Three Years Degree Course or equivalent thereto, as required as per the notification as no such requirement is necessary for such admission as provided in O. 299-V-3(d) Consequently, direction was given to the respondents to give admission to the petitioner in B.Sc. (Nursing) Part III Course. Similar orders were passed by this Court in S.B. Civil Writ Petition No. 1943/92 (Vinod Kumar v. State of Raj. and Ors.); S.B. Civil Writ Petition No. 2040/92 (Radha Kishan Purohit and Anr. v. State of Raj. and Ors. & at Principal Seat, Jodhpur); and S.B. Civil Writ Petition No. 1943/92 (Subhash Chand v. State of Raj. and Ors.).

7. The main contention of the learned Counsel for the petitioners is that the petitioners were/are entitled to get admission in B.Sc. (Nursing) Part III Course for trained and registered nurses, as they are eligible as per O.299-V-3(d). According to them, the petitioners had passed General Nursing Course and they

are registered nurses with a recognised body (State Nursing Council) and have a minimum of five years regular nursing experience, and these are the only requisite conditions for the eligibility for the admission to the Course as per the Ordinance and the extra requirement that the candidate should have passed the First Year Science Examination of Three Years Degree Course or equivalent thereto in the notification issued by the Principal, is contrary to the statutory provisions provided in the Ordinance. Counsel argued, any additional condition for the admission to the said course, which is not provided in the Ordinance, is illegal and ultravires. The learned Counsel further submitted that the Principal, College of Nursing, should be directed to prepare a fresh select list of the candidates and their eligibility should be considered as per the Ordinance. It was also argued that a similar view has been taken by this Court in some of the judgments, reference of which have been already made earlier.

8. On the other hand, Mr. Goyal submitted that the list of the select candidates for admission to B.Sc. (Nursing) Part III Course for trained and registered nurses was rightly prepared by the Principal. It was urged by him that the Ordinance 299-V-3 should be read as a whole and its Clauses (a) and (d) should be read together and if they are read together, then it is clear that for a candidate to be eligible for admission to B.Sc. (Nursing) Part III Course, he must have passed First Year Science Examination of Three Years Degree Course or equivalent thereto.

9. I have considered the above submissions and, in my view, the contention raised by the learned Counsel for the petitioners deserves to be accepted. A bare reading of O.299-V-3, which provides eligibility of the candidates for admission to various courses of study leading to B.Sc. [Nursing) Degree which consist-in four academic year i.e. Part I, Part II, Part III and Part IV, clause [a] of the said Ordinance provides the eligibility of the candidates for admission to the B.Sc. (Nursing) Part-I Course. After passing B.Sc. (Nursing) Part-I Examination, a candidate becomes eligible for admission to the B.Sc. (Nursing) Part-II Examination. Then, a candidate who passed B.Sc. (Nursing) Part II Examination of the University becomes eligible for admission to B.Sc. (Nursing) Part III Examination, and such candidates who passed B.Sc. (Nursing) Part III Examination, becomes eligible for admission to B.Sc. (Nursing) Part IV Course. This is one method of completing B.Sc. (Nursing) Course of four academic years for getting a degree.

10. There is one more nursing course which is known as General Nursing Training Course. The said General Nursing Training Course is provided under the Rajasthan Nurses Midwives, Health Visitors and A.N.M. Registration Act, 1964. The said course is of three years duration, both for male and female. This training course is also available to inservice candidates. Before 1990, for admission to General Nursing Training Course, the academic qualification was Higher Secondary Examination Pre- University Examination or Pre-Degree Examination in Science or equivalent thereto. The present petitioners had

completed Three Years General Nursing Training Course prior to 1990 and were passing the requisite academic qualifications, as required at that time, Order 299-V-3 provides two channels for admission to B.Sc. (Nursing) Part III Course, one is the regular channel and candidates after passing B.Sc. (Nursing) Part II Examination of the University becomes eligible for admission to Part III Course. The second channel for admission to B.Sc. (Nursing) Part-III Course has been provided in Clause (d) of the said Ordinance which is available to the registered nurses who had passed General Nursing Course having a minimum of five years regular nursing experience. A bare reading of Clause (d) of Order 299-V-3, makes it clear that this clause is independent to Clauses (a), (b) & (c) of the Ordinance and a different eligibility has been provided for admission to B.Sc. (Nursing) Part III Course for trained and registered nurses. As per this clause, for the eligibility of a candidate for admission to B.Sc. (Nursing) Part III Course, the necessary requisites are:

- (i) he should have passed the General Nursing Course
- (ii) should be registered nurse with a recognised body (State Nursing Council);
- (iii) have a minimum of five years regular nursing experience.

11. The Clause (d) of Ordinance 299-V-3 is meant for trained and registered nurses and such trained registered nurses having nursing experience of five years have been equated to B.Sc. (Nursing) Part III Course. The emphasis for the eligibility in this clause is on passing the General Nursing Training Course and a minimum nursing experience of five years. The contention of Mr. Goyal that this Clause (d) should be read along with Clause (a) cannot be accepted by any stretch of imagination. If it was to be read along with Clause (a), as argued by Mr. Goyal, the very purpose to provide benefit, to the trained and registered nurses shall be defeated as before 1990, for admission to General Nursing Training Course, the academic qualification was Higher Secondary Examination or Pre-University Examination or Pre-Degree Examination in Science or equivalent thereto. If this interpretation is accepted, then, all those candidates will be deprived to get the benefit of Clause (d) as they must have completed their General Nursing Training Course prior to 1985, so as to have a minimum nursing experience of five years. The language of Clause (d) is clear and it admits no other interpretation. If the argument of Mr. Goyal is accepted that the Clause (d) should be read along with clause (a) for the academic qualification of a candidate, then, it will be unreasonable as it will deprive many candidates to get the admission in B.Sc. [Nursing] Part III Course who had passed the General Nursing Training Course without having passed First Year of the Three Years Degree Course as no such academic qualification was required at that time. Similar view has been taken by this Court in several other writ petitions referred above and I am not convinced from the arguments of Mr. Goyal to take a different view.

12. Having held so, a more vexatious question still requires consideration about

relief which can/should be given in the present writ petitions. This question has been debated before me at length and is not so simple to answer,

13. The total number of seats in B.Sc. (Nursing) Part III Course for trained and registered nurses for the session 1991-92 were notified as 26. This fact is admitted by both the sides. Out of 26 seats, 18 candidates were* given admission in pursuance to the notification who were trained and registered nurses and had also passed First Year Science Examination of Three Years Degree Course or equivalent thereto. They were given upto 21.2.1992, when first time, this Court had taken the view in S.B. Civil Writ Petition No. 442/92 (Prakash Chand v. State of Raj. and Ors.) that the requirement of passing First Year Science Examination of Three Years Degree Course as mentioned in the notification dated 11.6.91 was illegal and contrary to the requisite qualifications as per 0.299-V-3[d] of the University of Rajasthan, Mr. Goyal has frankly conceded before me that after this judgment, the following B candidates have been given admission in compliance to the orders of this Court passed in various writ petitions:

(1) Anil Kumar (2) Ramesh Chand (3) Charan Singh (4) Om Prakash (5) Subhash Chand (6) Vinod Kumar (7) Tara Chand Jain; and (8) Prakash Chand.

14. Out of these 8 persons, except Charan Singh and Tara Chand Jain, the writ petitions of others have been allowed finally. The net position about the admission in B.Sc. (Nursing) Part III Course for trained and registered nurses is as under:

(i) 18 candidates were admitted prior to 21.2.92- as per notification,

(ii) 6 candidates were admitted on Court orders and their writ petitions have been finally decided,

(iii) 2 candidates have been given provisional admission as per Court orders, but, their writ petitions are pending.

15. A number of decisions were referred before me by the learned Counsel for the petitioners and Mr. Goyal for the guidance as to what final orders should be passed in such a situation. I would like to refer those decisions first.

16. In Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others, the question related to the admission of the petitioner in General Medicines for M.D. degree, while holding that the petitioner was eligible for admission in the subject of General Medicines for M.D. degree according to qualifications and other requirements set out in the advertisement the following relief was given to the petitioner in connection with his admission:

The petitioner was eligible for admission in the subject of General Medicines for M.D. degree in the year 1981 according to qualifications and other requirement set out in the advertisement. The sands of time have run out which is inevitable in judicial process. What relief can the Court grant to person unjustifiably refused

admission ? Post-graduate qualification in medical discipline is highly coveted. We must therefore find a fresh answer.

My Altaf Ahmed told us that the. new academic year is to commence some time in September. We accordingly direct that the petitioner shall be admitted in the subject of General Medicine for M.D. degree without any further test or selection during the current academic year which will commence not later than middle of September, 1983.

17. In Chandigarh Administration and another Vs. Manpreet Singh and others, the Hon'ble Supreme Court declined to cancel the admission of the respondents at a later stage as it would result in grave and irreparable prejudice to them. In the same judgment in SLP No. 16451 of 1991, however, a direction was given to the college authorities to create three more seats in the said course and admit the first three available students in the waiting list against those seats.

18. In Punjab Engineering College, Chandigarh v. Dharminder Kumar Singhal and Ors. 1990 AIR (75) while considering the admissions made in engineering colleges in violation of rules and regulations, the Apex Court of the country, in para No. 6, observed as under:

It is a 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 meet 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.

19. Then, in para Nos. 9 & 10, it was further observed:

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 proceeding 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 relaxed, 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."

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.

20. In *State of Rajasthan and Anr. v. Beni Prasad Sharma etc. etc.* 1987(1) RLR 135, the controversy related to examinations held in the year 1985 for recruitment to the services in various branches. The examination included written tests carrying with the major percentage of marks out of the aggregate and upto the marks of 15% of the aggregate for viva-voce test. However, in preparation of the select list for the services, candidates who obtained below the prescribed minimum marks in viva voce test were eliminated even when the total of the marks obtained by them in the written and viva tests was sufficiently high to include them in the select list. While holding the concerned rules to be invalid to the extent, they prescribed the requirements of obtaining a minimum of 33% marks in the personality and viva-voce examination separately for candidates of general category for being included in the list of select candidates for any of the States services by the aforesaid rules to be invalid, the select list was quashed and a direction was given to prepare fresh select list.

21. In *Kanhaiya Lal etc. etc. v. State of Raj. and Anr.* 1987(1) RLR 893 admission to the candidates in General Nursing Course was challenged on various grounds. While allowing the writ petition, it was observed that in technical education, merit should be the best test and by allowing the candidates with very poor percentage in the technical education would create chaotic condition, which cannot be permitted by the Court. Consequently, the respondents were directed to prepare a merit list of all the applicants afresh, but the candidates of Scheduled Castes and Scheduled Tribes who were admitted, were allowed to continue the course. With regard to the provisional admission at the instance of the Court, it was observed as under:

The provisional admission was allowed to some of the candidates at their own

risk. Now that only those who come within the merit according to the list to be prepared would be entitled to the admission, the provisionally admitted students shall have no right to continue the Course by virtue of the order of the Court. However, if some of them have a high percentage and are sure of their getting a chance on the basis of merit in pursuance of this Order, they may continue to study until the final selection list is declared. This would however be at their own risk and will not in any way create a right in them to continue the study further.

22. Lastly, in para No. 92, it was observed as under;-

Before parting with the petitions, I consider it necessary to add that grievance of the petitioner is not only theirs but is of a class i.e. of all those who have been kept out of the Course because of certain candidates getting entry to it erroneously. It is in a way class litigation, because the decision of these writ petitions is likely to affect the candidates who had applied at various Centres meant for the course. In cases of the present category many a times one person or a few, approach the Court to make a test case, and if they succeed, others follow. Cases are also not rare when only those who can afford litigation expenses approach the Court and get relief, while others not so fortunate suffer the consequences of the incorrect decision of the persons in power or the concerned authorities. It is in such matters that the Courts are expected to extend justice and equity to those entitled to it. What I mean to say is that in appropriate cases the Court deciding a particular case in exercise of its extraordinary jurisdiction, should not confine to redressing the grievance of the party approaching it, rather it should, within permissible reasonable scope issue directions in a way which may give relief to all those similarly placed.

23. In *Heman Das v. State of Raj. and 15 Ors.* 1989(1) RLR 670, it has been held that High Court is not bound by traditional concept of writs, which were issued by courts in England- in exercise of its jurisdiction under Article 226, High Court can fashion the relief taking into account the facts and circumstances of a particular case.

24. In the background of the aforesaid facts and circumstances, it has to be decided as to what final order should be passed in the present writ petitions. While passing the final order, the following facts have to be taken into consideration:

(i) As per the Notification dated 11.6.1991, inviting applications for admission in B.Sc. Part III course (Trained and Registered Nurses], it was necessary for the applicants to have passed First Year Science Examination of Three Years Degree Course or equivalent thereto, in all the compulsory subjects and the optional subjects of medical group (Physics, Chemistry and Biology), and a provisional select list of the candidates for admission was prepared of those candidates only who had passed the above examination,

(ii) The applications of the petitioners and other similarly circumstanced persons who had passed the General Nursing Course and were eligible for admission to

B.Sc. (Nursing Part III Course in accordance with Order 299-V-3 were not considered on the ground that they had not passed the First Year Science Examination of Three Years Degree Course or equivalent thereto,

(iii) That the notification dated 11.6.1991 was not challenged by any person including the petitioners in any court of law at the initial stage, with the result, candidates were given admission on the basis of the eligibility required as per the notification,

(iv) Out of the provisional select list of such candidates, the following 18 persons were given admission on the various dates given as under. Out of these 18 persons, 17 persons were given admission prior to the judgment of this Court in S.B. Civil Writ petition No. 442/92 (Prakash Chand v. State of Rajasthan, decided on 17.2.92). This fact has been supplied by the respondents in the additional affidavit of the Officer Incharge- Principal, College of Nursing, Rajasthan, Jaipur; and the 18th person Shri Kanta Prasad was given admission on 21.2.92 after the judgment,

(v) All these above 18 persons are also eligible for admission in B.Sc. (Nursing) Part III Course in accordance with Order 299-V-3 and if a list had been prepared on merits in accordance to the requirement of Ordinance, then too, some of them would have got admission in the above course; and

(vi) (a) Besides the above 8 persons, the following persons have been given admission by the orders of the Court and their writ petitions have been finally decided:

(i) Prakash Chand S/o. Bhoj Raj

(ii) Vinod Kumar S/o. Sukhram

(iii) Om Prakash S/o. Deep Chand

(iv) Subhash Chand

(v) Ramesh Chand S/o. Bhuraram

(vi) Anil Kumar S/o. Heera Lal.

25. I have also been informed that against the judgment of the Single Judge, the appeals are pending in the Division Bench in these cases.

(b) Two candidates, namely, Tara Chand s/o. Nihal Chand and Charan Singh s/o. Preetam Singh have been given provisional admission by the orders of the Court and their writ petitions are still pending,

(c) The writ petition of the following four persons have been allowed at the Principal Seat at Jodhpur, and they will have to be given admission according to the orders of this court:

(i) Radha Kishan Purohit

(ii) Chandra Gopal.

[iii] Om Prakash Sualaka

(iv) Ram Kishan Sualaka in S.B. Civil Writ Petition No. 2040/92, decided on 17.4.92; and S.B. Civil Writ Petition No. 1903/92, decided on 8.4.92.

(d) S.B. Civil Writ Petition No. 1391/92 of one Lalit Kumar has also been allowed by the Jaipur Bench on 28.2.92 and he has to be given admission in accordance with the Court order.

26. From the discussions made above, it is clear that the provisional select list for admission prepared by the respondent-Principal, College of Nursing, was not in accordance with the Order 299-V-3. Admission to 26 candidates was to be given in B.Sc. (Nursing) Part III Course [for Trained and Registered Nurses) as per Clause (d) of the aforesaid Ordinance and the merit list amongst the candidates was to be prepared in accordance with the eligibility of the Ordinance, which was not done by the respondent No. 3. The grievance of all the petitioners in these petitions is not only theirs, but, is of a class i.e. of all those who have been kept out of the course because the select list for admission was not prepared properly in accordance with the eligibility of the Ordinance. In this way, it is a class litigation and the decision of these petitions is likely to affect those candidates who were entitled to get the admission in the course in case a proper select list had been prepared for admission. As held by the Supreme Court and this Court in the judgments referred above, the courts are expected to extend justice and equity to those entitled to it, and in deciding a particular matter in exercise of its extraordinary jurisdiction, it should not confine to redressing the grievance of the party approaching to it, rather it should, within permissible reasonable scope, issue directions in a way which may give relief to those similarly placed. Judged from this angle, it is just, reasonable and equitable that the respondents should be directed to prepare a fresh select list [on merit) for admission in B.Sc. (Nursing) Part III Course for trained and registered nurses as per Clause (d) of O.299-V-3 and all those applicants should be given admission if they are inclined to join the course, irrespective of the fact whether they have filed the writ petitions or not.

27. It also requires consideration as to whether the admission of 18 persons who were given admission by respondent No. 3 in pursuance to the Notification dated 11.6.1991, should be cancelled or they should be allowed to continue their studies in the course. It is true that out of those admitted 18 persons, if a select list had been made properly for admission as stated above, then, some of them might not have found place in the merit list. But, still the reasonability and equity demands that the admission to those 18 persons should not be cancelled for various reasons. Firstly, they were not at fault in getting the admission in accordance with the eligibility mentioned in the notification dated 11.6.1991. Secondly, it is not disputed that all of them are otherwise eligible and qualified to get the admission though some of them might not have been included in the

merit list of the select candidates if the list had not been prepared including only those applicants who had passed First Year Science Examination of Three Years Degree Course or equivalent thereto. Thirdly, those persons had taken admission in the month of January and February, 1992 prior to the decision by this Court where a different interpretation was given, for the eligibility clause, and they have been continuously attending the classes after depositing the fees. Fourthly, the notification dated 11.6.91 was not challenged at the initial stage in which it was given out that a candidate to be eligible to get admission must have passed First Year Science Examination of Three Years Degree Course or equivalent thereto. Fifthly, those candidates have not been given any notice of the writ petitions. They have not been made parties except in one writ petition in which also notices were not sent to them. It would be against the principles of natural justice to pass an order prejudicial to them in violation to the principles of natural justice.

28. It is true that if the admission to these 18 persons is not disturbed, then, the respondents may have to increase the number of seats, but, I am of the view that it would be more prejudicial and unreasonable to cancel their admission than the inconvenience that may be caused to the respondents in increasing the number of seats. While retaining their admission, I also do not think it just and proper to deny admission to those candidates who are otherwise eligible and entitled to get the admission if a proper select list is prepared. I, therefore, hold that the admission of 18 persons who have been given admission in pursuance to the notification dated 11.6.1991 shall remain intact.

29. It also requires consideration about those candidates who have got admission in pursuance to the Court orders, the detail of which have been given in the preceding paragraphs. As stated earlier, out of 8 persons who have been already given admission in pursuance to the Court orders, the writ petitions of 6 persons have been finally decided and after final decision of the writ petitions, they have been admitted, while two candidates viz. Charan Singh and Tara Chand have got provisional admission as their writ petitions are pending. Candidates provisionally admitted by the order of the Court during the pendency of the writ petitions, cannot claim to get the admission as of right as their fate depends upon the final decision of the writ petitions. Simply because they have got provisional admission by the order of the Court, if they are less meritorious, they cannot be preferred in preference to more meritorious candidates. Therefore, in the fresh select list, which shall be prepared by respondent No. 3 in pursuance to this judgment, if these candidates get their place, their provisional admission shall not be disturbed. If their names are not included in the merit list of the select candidates, then, their provisional admission shall stand cancelled.

30. So far six candidates who have been admitted after the final decisions of the writ petitions and four candidates will have to be admitted in pursuance to the judgments in two writ petitions decided at the principal seat of the High Court as stated above, I am unable to cancel their admissions while sitting in the Single

Bench. It is true that some of them are less meritorious and some of those candidates or all of them may not be included in the fresh select list which shall be prepared by respondent No. 3. As I have been intimated, against the judgment of the Single Bench, the appeals are pending before the Division Bench and it is for the Division Bench to take a note of this fact and pass any appropriate order, as it may think proper and reasonable. If their admissions are not cancelled by the higher court, then, their admissions will also remain intact and this may also call increase in the number of seats, but, I have no other alternative in this regard.

31. In three writ petitions, it was also argued that the applicants belong to Scheduled Castes and as such, they are entitled to get admission as per reservation policy. However, none of them has placed any such reservation policy on the record to be adopted by the educational institution to provide admission to the students of Scheduled Castes and Scheduled Tribes. Had some material been placed before me, I would have examined this aspect also. However, it is for the respondent No. 3 to consider if such reservation policy is applicable for the admission to B.Sc. (Nursing) Part III Course available for trained and registered nurses, if any, such material is brought before me by the petitioners.

32. The net result of the above discussion is that the writ petitions are disposed of as under:

(i) A fresh select list of 26 candidates as per the merit shall be prepared as discussed earlier, for the Principal, College of Nursing Rajasthan, for the admission in B.Sc. (Nursing) Part III Course for Trained and Registered Nurses. The list shall be prepared within 7 days from today and all the selected candidates shall be intimated telegraphically as well as by registered post about their admission in the Course, so that they may take admission without further loss of time in case they so desire.

(ii) The admission of 18 candidates who were given admission by the Principal, as per select list prepared in accordance with notification dated 11.6.1991, shall remain undisturbed and they shall be allowed to continue their studies in B.Sc. (Nursing) Part III Course.

(iii) The admission of the candidates who have got admission in the Course on the final decision in the writ petitions filed by them, shall also remain undisturbed, subject to any order that may be passed by a Division Bench before whom the appeals filed by the Department are pending.

Similarly, five candidates whose writ petitions have been allowed by the Hon'ble Single Judge, but, who have not taken admission as yet, will have to be given admission in pursuance to the decisions, provided in appeal/appeals the Division Bench does not stay or set aside the order of the Single Judge.

(iv) The candidates who have been given provisional admission in pursuance to the orders of the High Court, shall be given admission in the Course if their

names are included in the fresh select list, otherwise, their provisional admission shall stand cancelled.

(v) The writ petition of Shri Shyam Babu is disposed of in the manner that if his name finds place in the fresh select list, he shall be given admission.

33. For accommodating to the candidates other than the candidates of the fresh select list, the Department may require to increase the number of seats and the State Government may also require to make additional expenditure to meet the requirement on account of increasing the number of seats. However, we cannot help in this connection as the select list was wrongly prepared by the concerned authority in violation to the requirements of the Ordinance. For their lapses, the career of the deserving students cannot be permitted to spoil and if some students are allowed to continue the studies on account of the wrong admission given by the respondents, that is also due to the wrong done by the concerned authority.

34. All the writ petitions are allowed as indicated above. No order as to costs.