

(1975) 07 KL CK 0009

In the High Court Of Kerala

Case No : Writ Appeal No's. 111 to 114 and 115 of 1975 and O.P. No. 2506 of 1975

The State of Kerala and Another

APPELLANT

Vs

K.S. Krishna Kumari and Others

RESPONDENT

Date of Decision : 14-07-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4)

Citation : AIR 1976 Ker 54

Hon'ble Judges : P. Govindan Nair, C.J.; T. Kochu Thommen, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; K.P. Dandapani, Sumathy Dandapani, K. Chandrasekharan, V. Sivaraman Nair, V.M. Nayanar and K. Raveendran, for the Respondent

Final Decision : Allowed

Judgement

P. Govindan Nair, C.J.—The appeals arise from a common judgment disposing of O. P. Nos. 4873, 5006, 5004 5188 and 6449 of 1974.* The Original Petitions raise the same question that has been dealt with in the judgment which gave rise to the appeals,

2. The points raised in arguments advanced in the Writ Appeals and the Original Petitions by counsel were also common. We shall therefore dispose of the Writ Appeals and the Original Petitions by this common judgment.

3. The facts of the Original Petitions disposed of by the common judgment which is under appeal in the Writ Appeals have been stated in paragraphs 1 to 6 of the judgment. We shall extract those paragraphs:

"The petitioners in these Original Petitions applied for admission to the first M. B. B. S. course for the year 1974-75. But they did not get admission- The petitioners who belong to communities which are socially and educationally backward, question the constitutionality of the restriction imposed in G. O. P.

208/66/Edn. dated 2-5-1966 (Ext. P-1 in O; P. No. 4873 of 1974) which insists that only applicants who are members of families whose aggregate annual income is below Rs. 6000/- will be entitled to admission to the seats reserved for students belonging to the backward classes. The petitioners have got alternate contention that in any case, the income ceiling of Rs. 6000/- fixed in Ext. P-1 G. O. is highly arbitrary and hence not valid and sustainable.

2. The petitioner in O. P. No. 4873 of 1974 belongs to the Muslim community. She secured 349 marks and is entitled to 5 marks more on the basis of her sports certificate. Though she secured more marks than the minimum fixed this year for candidates of the Muslim community, she was not selected for admission to the first M. B. B. S, course. Her father is a small businessman. She did not produce an income certificate of the Tahsildar because her father was having income which is a little more than Rupees 6000/-, the ceiling fixed in Ext. P-1 G. O. Along with the petitioner's application Exts. P-3 and P-4 Income Tax assessment orders issued to the petitioner's father for the years 1972-73 and 1973-74 respectively were submitted. As per Ext. P-3 the net income is Rs. 3710/- and as per Ext. P-4 the net income is Rs. 7020/- As the petitioner's name was not included in the list of selected candidates, she on 5-11-1974 submitted Ext. P-5 application before the 2nd respondent-State. No orders are so far issued on Ext. P-5 and the enquiries made by the petitioner's father revealed that there is no prospect of Ext. P-5 application being allowed in view of Ext. p-1 and the other orders in the matter. It is under the above circumstances that the petitioner has approached this Court with this Original Petition for a writ of certiorari to quash the ceiling of income limit in Ext. P-1 and other subsequent orders in the matter and for a writ of mandamus or any other appropriate writ, direction or order to treat the petitioner as a member of socially and educationally backward class and to consider the petitioner for admission to the Medical College in the State and to admit the petitioner for the first M. B. B. S. course. A counter-affidavit has been filed on behalf of the 1st respondent-Principal, Medical College, Tri-vandrum. The statement in the above counter-affidavit is that candidates from families whose annual income is less than Rupees 6000/- are only eligible to be considered for admission under reservation. The petitioner has not produced the income certificate and hence she was not considered under reservation. The petitioner has filed a reply affidavit. The statement in the reply affidavit is that the direction in Ext. P-1 G. O. is that applicants should produce only a community certificate and there is no mention about the production of an income certificate. It is also pointed out in the reply affidavit that nothing is mentioned therein about the contentions raised by the petitioner in the Original Petition.

3- The petitioner in O. P. No. 5006 of 1974 is also a member of the Muslim community. He secured 352 marks and has more than the minimum required for admission for candidates belonging to the Muslim community- Respondents 3 to 5 are candidates selected for admission and who have got only lesser marks than the petitioner.

The petitioner in this Original Petition also questions the ceiling of income provided in the Government Order dated 3-5-1966 and also seeks a writ in the nature of mandamus directing that the petitioner be admitted to the first M. B. B. S, course in any one of the Medical Colleges in the State. A counter-affidavit has been filed in this case on behalf of the 2nd respondent-State of Kerala- The averments and contentions raised in the counter affidavit are similar to those raised in the counter-affidavit filed in O. P, No. 4873 of 1974. As per order on C. M. p. No. 589 of 1975 respondents 3 to 5 were removed from the party array,

4. The petitioner in O. P, No. 5004 of 1974 belongs to Vanika Vysya community. She secured 348 marks and she is also entitled to 5 marks more on the basis of her sports certificate though the minimum marks fixed this year for her community is 342. As her name did not find a place in the list of selected candidates she made Ext, P-3 representation before the 2nd respondent-State of Kerala. But the 2nd respondent did not pass any orders on Ext P-3. As per order on C. M. P. No, 30 of 1975 the petitioner im-pleaded two selected candidates as additional respondents.

5. The petitioner in O. P. No- 5188 of 1974 belongs to the Thiyya community. She secured 359 marks which is more than the minimum fixed for applicants from that community this year. According to the petitioner, respondents 3 to 6 who are candidates selected for admission secured only lesser marks. The petitioner's case is that she was not selected for one of the reserved seats because her father's income in 1973-74 was more than the ceiling fixed by the Government Order dated 2-5-1966. When her name did not find a place in the list of selected candidates, she submitted a representation before the 2nd respondent-State. She complains that no orders have so far been passed on her representation, A counter-affidavit has been filed on behalf of the 2nd respondent-State of Kerala. The 4th respondent, a candidate selected for the first M. B. B. S. course, also has filed a counter-affidavit controverting the contentions raised by the petitioner in the Original Petition.

8. The petitioner in O. P. No. 5449 of 1974 is a member of th" Thiyya community, who secured 363 marks which is more than the minimum prescribed this year for the applicants from that community, The petitioner's grievance is that though respondents 3 to 6 who secured only lesser marks were selected, she was not selected, the reason being that her father's income is more than Rs. 6000/-. Subsequent to the filing of this Original Petition, as per order on C. M. P. No. 1277 of 1975 dated 23-1-1975 the 3rd respondent has been removed from the party array."

4. The arguments advanced may be summarised as follows:--

5. Sri K. Chandrasekharan contended that social and economic backwardness cannot depend on the income of the applicants for admission in the Medical College. He therefore urged that the reference in the Report of the Commission to income for excluding a citizen from the socially and educationally backward

classes and the fixing of a ceiling regarding that income were arbitrary and discriminatory and hence violative of Article 14 of the Constitution, He further submitted that the historical reasons on account of which the Muslim community was socially and educationally backward continued to exist in the case of the petitioners (Muslims) for whom he appeared and that social and educational backwardness cannot be negated on the basis of the income of the parents of the petitioners.

6. Sri Sivaraman Nair appearing in another batch of cases contended that the Muslim community was socially and educationally backward and that the Commission had adopted the principle of excluding some of the members of this community who really belong to the backward class exclusively with reference to income and therefore such exclusion was unjustified.

7. Sri S. Easwara Iyer advanced similar arguments. He submitted that there are already a group of socially and educationally backward people recognised on the basis of caste and that picking up some from that category, on the basis of income and making them a class which is not socially and educationally backward is not justified.

8. The learned Judge considering these arguments which were elaborated before him and with reference to which several decisions had been cited, disposed of the matter on two very short grounds. The learned Judge took the view that the Commission had accepted the economic factor as the determining factor for the classification that it adopted. It is stated towards the end of paragraph 14 of the judgment:

"The Commission as a matter of fact laid down the general principles for ascertaining the social and educational backwardness in the light of the general principles laid down by the Supreme Court in the above decisions and this has been made clear in para 9 on page 23 of the report. The Commission has really accepted the test of poverty as the determining factor of social backwardness. It is here exactly where the shoe pinches." Again towards the end of paragraph 15, the teamed Judge has repeated:

"The acceptance by the Commission of the test of poverty as the determining factor for social backwardness is and is the only reason why the above microscopic minority in a backward caste or community is taken out of the socially and educationally backward class contemplated by Article 15(4) of the Constitution."

9. The learned Advocate General questioned the basis of the decision. It was submitted by the Advocate General that the different castes that have been described in Appendix VIII to the Commission Report have not been accepted by the Commission as embodying the group or socially and educationally backward class of people. According to the learned Advocate General, only those among the members of the castes delineated in Appendix VIII whose economic means was below that stated by the Commission were treated by the Commission as

socially and educationally backward. Such a course the Advocate General submitted was permissible for, real, social or educational backwardness will to a certain extent be reflected by the economic condition of the group. It is contended that this principle has been accepted by the various decisions of this Court and of the Supreme Court. If in a caste which is generally regarded as socially and educationally backward there are a sufficient number of persons who in fact are not socially and educationally backward, the Advocate General urged that that group of persons could be excluded from the benefit of reservation.

10. When the members of a caste are wholly socially and educationally backward, the caste can be said to be socially and educationally backward. This has been ruled by the Supreme Court in *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.,*. Their Lordships observed:

"If after collecting the necessary data It is found that the caste as a whole is socially and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above general average. There is no gainsaying the fact that there are numerous castes in the country which are socially and educationally backward and therefore a suitable provision will have to be made by the State as charged in Article 15(4) to safeguard their interests." The Supreme Court further observed:

"But one thing is clear that if an entire caste is, as a fact, found to be socially and educationally backward, their inclusion in the list of backward classes by their caste name is not violative of Article 15(4)."

We shall also refer to another passage from the same judgment,

"To conclude, though prima facie the list of Backward Classes which is under attack before us may be considered to be on the basis of caste, a closer examination will clearly show that it is only a description of the group following the particular occupations Or professions, exhaustively referred to by the Commission. Even on the assumption that the list is based exclusively on caste, it is dear from the materials before the Commission and the reasons given, by it in its report that the entire caste is socially and educationally backward and therefore their inclusion in the list of Backward Classes is warranted by Article 15(4). The groups mentioned therein have been included in the list of Backward Classes as they satisfy the various tests, which have been laid down by this Court for ascertaining the social and educational backwardness of a class,"

Caste is however only a relevant circumstance and not a dominant test is clear from the observations of the Supreme Court in *R. Chitralakha and Another Vs. State of Mysore and Others,*. In paragraph 15 it has been stated:

"Two principles stand out prominently from the said observations, namely, (i) the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness; and (ii) though it is a relevant factor to determine the

social backwardness of a class of citizens, it cannot be the sole or dominant test in that behalf. The observations extracted in the judgment of the High Court appear to be in conflict with the observations of this Court. While this Court said that caste is only a relevant circumstance and that it cannot be the dominant test in ascertaining the backwardness of a class of citizens, the High Court said that it was an important basis in determining the class of backward Hindus and that the Government should have adopted caste as one of the tests. As the said observations made by the High Court may lead to some confusion in the mind of the authority concerned who may be entrusted with the duty of prescribing the rules for ascertaining the backwardness of classes of citizens within the meaning of Article 15(4) of the Constitution, we would hasten to make it clear that caste is only a relevant circumstance in ascertaining the backwardness of a class and there is nothing in the judgment of this court which precludes the authority concerned from determining the social backwardness of a group of citizens if it can do so without reference to caste. While this Court has not excluded caste from ascertaining the backwardness of a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of a class. To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but, if it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria."

And in *M.R. Balaji and Others Vs. State of Mysore*, the Supreme Court stated:

"Therefore, in dealing with the question as to whether any class or citizens is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens. In this connection it is, however, necessary to bear in mind that the special provision is contemplated for classes of citizens and not for individual citizens as such, and "so, though the caste of the group of citizens may be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizens, it may not always be logical and may perhaps contain the vice of perpetuating the castes themselves.

Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in toto from the operation of Article 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward, That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the

ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens."

In *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*, there is the following observation of the Supreme Court:

"It is not merely the educational backwardness or the social backwardness which makes a class of citizens backward; the class identified as a class as above must be both educationally and socially backward. In India social and educational backwardness is further associated with economic backwardness and it is observed in *M.R. Balaji and Others Vs. State of Mysore*, that backwardness, socially and educationally is ultimately and primarily due to poverty. But if poverty is the exclusive test, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservations are made only on the ground of economic considerations, an untenable situation may arise because even in sectors which are recognised as socially and educationally advanced there are large pockets of poverty. In this country except for a small percentage of the population the people are generally poor -- some being more poor, others less poor. Therefore, when a social investigator tries to identify socially and educationally backward classes, he may do it with confidence that they are bound to be poor. His chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though the two words "socially" and "educationally" are used cumulatively for the purpose of describing the backward class, one may find that if a class as a whole is educationally advanced, it is generally also socially advanced because of the reformative effect of education on that class. The words "advanced" and "backward". are only relative terms--there being several layers or strata of classes, hovering between "advanced" and "backward", and the difficult task is which class can be recognised out of these several layers as being socially and educationally backward".

11. Economic backwardness plays a part in social backwardness and in educational backwardness has been recognised by this Court and by the Supreme Court. In *State of Kerala and Another Vs. R. Jacob Mathew and Others*, , Chief Justice M. S. Menon observed in paragraph 9 as follows :--

"In these regions of human life and values the clear-cut distinctions of cause and effect merge into each other. Social backwardness contributes to educational backwardness, educational backwardness perpetuates social backwardness and both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition".

In *M.R. Balaji and Others Vs. State of Mysore*, , Gajendra-gadkar J., as he then was, said that

"Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward .

"However, we may observe that if any State adopts such a measure, it may afford relief to and assist the advancement of the backward classes in the State, because backwardness, social and educational, is ultimately and primarily due to poverty".

12. In the case of the major communities like Ezhavas and Muslims which form sizable portions of the population of the State the Commission found it difficult at the time of its report to classify those communities wholly, or even by and large, as socially and educationally backward- The anomaly of including all the members of such castes as socially and educationally backward, was noticed by this Court in the Full Bench decision in *V. Hariharan Pillai Vs. State of Kerala and Others*, . It was however felt by the Full Bench that there was no material before it to come to the conclusion that a section of the members of the caste were not socially and educationally backward. The court was therefore not prepared to hold that the assertion that the members of the caste were by and large backward socially and educationally was not correct. At the same time it struck a note of warning in paragraph 22 of the judgment. We shall extract paragraphs 22 and 23 of the judgment:

"22. It is however necessary to strike a serious note of warning because the data that has been relied on, like the report of the Committee constituted by the Travancore Government before 1985 and that of the Committee that considered the question in 1957 as well as the census report of 1941, which have been relied on, have all become quite obsolete and out of date now. It is essential that relevant data must be collected periodically. The provisions in Articles 15(4) and 16(4) of the Constitution are only transitory provisions and the action taken under that must be modulated from time to time. This can be done only if surveys are made at regular intervals and detailed information collected. While I am not for interfering with the selection made on the basis of principles that have more or less been in force for more than two, perhaps three, decades, I am not for continuing the system without the matter being looked into afresh.

23. I consider that the "backward classes" have to be drawn from all weaker sections of citizens irrespective of the religion and/or caste to which those sections may belong. With this end in view, it is desirable that the State should undertake a detailed survey as early as possible. There will be no justification in continuing to apply the principles embodied in rules 14 to 17 of the General Rules after 31-3-1968 without a fresh appraisal of the question involved."

It is in the light of these observations of the Full Bench of this Court that the present Commission was constituted. The principles applied by the Commission

have been stated by the Commission in the report. It has applied the principle that for the test of social backwardness, economic factors as well as caste/ community can be taken into account. It has said so in paragraph 11 at page 29 of the Report. The main question that arises for consideration is whether the laying down of such a test is warranted by the Constitutional provisions as interpreted by the Supreme Court or whether what has been taken into account by the Commission is an extraneous consideration or an irrelevant consideration which would make the classification violative of Article 14 of the Constitution. It has been emphatically argued before us by Sri, Sivaraman Nair as well as by other counsel that a very insignificant section of the castes which are socially and educationally backward has been excluded by the Commission mainly on the basis of an artificial level of income. It was contended that this "mini" classification as Sri. Sivaraman Nair termed it is unjustified and even arbitrary.

13. The learned Judge relied on the observations of the Supreme Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, for accepting the above argument. Paragraph 23 of the judgment was referred to by the Commissioner and the observations therein were emphasised in arguments by counsel before us. We shall extract paragraph 23:

"23. In *M.R. Balaji and Others Vs. State of Mysore*, this Court said that social backwardness is on the ultimate analysis the result of poverty to a large extent and that the problem of backward classes is in substance the problem of rural India. Extracting these observations the Attorney General contended that poverty is not "only relevant but is one of the elements in determining the social backwardness. We are unable to accept the test of poverty as the determining factor of social backwardness."

We do not understand the judgment as laying down that poverty is not a relevant factor. All that has been ruled is that poverty cannot be the determining factor. The very same judgment stresses the relevancy of poverty and accepts the position that it is one of the elements to be considered in determining social and educational backwardness. This is clear from paragraphs 19 and 20 of the judgment. Before we read these paragraphs it is well to remember the question that arose for decision before the Supreme Court in the case. The Government order related to the admission to the Medical College and the order provided for reservation for all those who inhabited the rural areas as well as the hill and Uttarakhand areas in Uttar Pradesh. With reference to those who inhabited the hill and Uttarakhand areas, the Supreme Court observed as follows in paragraphs 19 and 20:

"19. The hill and Uttarakhand areas in Uttar Pradesh are instances of socially and educationally backward classes of citizens for these reasons. Backwardness judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources, When large areas of land maintain a

sparse, disorderly and illiterate population whose property is small and negligible the element of social backwardness is observed. When effective territorial specialisation is not possible in the absence of means of communication and technical processes as in the hill and Uttrakhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people.

20. Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttrakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttrakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education."

On the other hand, with reference to those who inhabited the rural areas, the Supreme Court stated thus in paragraph 24:

"24. The 1971 Census showed population in India to be 54.79 crores. 43.89 crores or 80.1 per cent, live in rural area. 10.91 crores or 19.9 per cent live in cities and towns. In 1921 the rural population in India was 88.8 per cent. In 1971 the rural population was reduced to 80.1 per cent. The rural population of Uttar Pradesh in 1971 was roughly seven and a half crores. The population in Uttrakhand was roughly seven and a half lakhs. The population of Hill areas in Uttar Pradesh was near about twenty five lakhs. It is incomprehensible as to how 80.1 per cent of the people in rural areas or 7 crores in rural parts of Uttar Pradesh can be suggested to be socially backward because of poverty. Further, it is also not possible to predicate poverty as the common trait of rural people. This Court in Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others, said that if poverty is the exclusive test a large population in our country would be socially and educationally backward class of citizens. Poverty is evident everywhere and perhaps more so in educationally advanced and socially affluent classes. A division between the population of our country on the ground of property, that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people on the other that the rural people are socially and educationally backward class." And in Paragraph 29, there is the following observation:--

"29. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. 80 per cent of the population of the State cannot be a homogenous class, Poverty in rural areas cannot Be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats

from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15."

The Supreme Court therefore found that it was unable to accept the proposition that such a large section of the people of the State who inhabited the rural areas can all be treated to be economically poor and socially and educationally backward. That is the basis of the decision of the Supreme Court and that is the reason for the reservation in favour of the persons inhabiting the rural areas being set aside. It is in the right of the observations in paragraph 29 and paragraphs 19 and 29 that paragraph 23 has to be understood. We do not understand the decision of the Supreme Court as overruling the principles that have been laid down by the Supreme Court in its earlier decisions, some of which we have quoted in our judgment, or for that matter, altering or modifying the same. The conclusion therefore is irresistible that poverty or economic standards is a relevant factor in determining social backwardness or even educational backwardness because the economic position has a direct nexus to social and educational status. Economic backwardness contributes to social backwardness and prevents educational advancement.

14. What the Commission has stated is based on the material that it collected. It had reason to come to the conclusion that social backwardness did not exist in the case of the more well-to-do members of the communities or castes which have been included and described in Appendix VIII of the Report. In paragraph 13 in Chapter III of the Report, the Commission has given the reasons for reaching the conclusion that it did viz., that with the improvement in economic standards the social backwardness disappeared. It noticed the fact that what Article 15(4) provides is of social and educational backwardness. In other words, the backwardness must be both educational and social and it could not come to the conclusion that in the case of the more prosperous among the communities there was social backwardness.

15. We must also refer to the suggestions that only a very insignificant section of the castes has been excluded. Though the percentage of the population excluded is not large the numbers excluded are substantial.

16. We are also unable to accept the contention that the classification is unjustified.

17. Counsel, Sri. Sivaraman Nair pointed out before us the narrow manner in which his client lost the chance of getting admitted into the Medical College. It was pointed out that the chance depended on the fluctuations in the income of the parents of his client and he emphasised the uncertainty resulting from the adoption of an income of Rs. 6,000/- per annum as the yardstick of the economic

position. In all cases of classification there will be border-line cases. If the classification is permissible the fact that it may cause hardship to a few individuals by itself will not make the classification unjust, unfair or arbitrary or perverse. We quite see the hardships in the case of the petitioners whose petitions have been allowed by the learned Judge and even in the other case that has been posted along with these writ Appeals. We can only say that they have been unfortunate in not getting admission. Whatever be the level of income fixed there will be border-line cases. The real question is should a social and educational backwardness of the castes resulting from historical reasons be perpetual and the caste as a whole treated as socially and educationally backward even if there be a group of persons in the castes who are not socially and educationally backward. Should all the members of such a community always remain backward? The idea in making the reservation is to give the members of such caste or community an equal opportunity with those who are treated as socially and economically advanced classes of the society. If a group in those castes/communities were able to advance socially and educationally and economically, to make reservations for them would be to deprive the chances of the really, socially and educationally backward classes of people in those communities/castes. We may refer to the following observations of the Supreme Court in *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*, :

"This interpretation will carry out the intention of the Constitution expressed in the aforesaid Articles. It helps the really backward classes instead of promoting the interests of individuals or groups who, though they belong to a particular caste a majority whereof is socially and educationally backward, really belong to a class which is socially and educationally advanced. To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward, an effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression "classes" as "castes", the object of the Constitution will be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really deserve. This anomaly will not arise if, without equating caste with class, caste is taken as only one of the considerations to ascertain whether a person belongs to a backward class or not. On the other hand, if the entire sub-caste, by and large, is backward, it may be included in the Scheduled Castes by following the appropriate procedure laid down by the Constitution.

In identifying backward classes, therefore, one has to guard oneself against including therein sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated. In this connection it must also be remembered that State resources are not unlimited and, further the protection given by special reservation must be balanced against the constitutional right of every citizen to demand equal opportunity. Moreover,

where appointments and promotions to responsible public offices are made greater circumspection would be required in making reservations for the benefit of any backward class because efficiency and public interest must always remain paramount. It is implicit in the idea of reservation that a less meritorious person is to be preferred to another who is more meritorious."

18. It is not as though these castes or communities as such suffer in any manner in the matter of reservation of seats by the principle adopted by the Commission and the Government. Reservation for the members of the community in quantum remains the same which are to a large extent treated as consisting of persons who are socially and educationally backward. The communities described in Appendix VIII as such therefore do not lose a single seat that had been reserved for them earlier before the present Report of the Commission had been accepted by the order of the Government, Ext. P-1 in O. P. No. 5004 of 1974 which gave rise to W. A. No. 111 of 1975. The competition is between the more advanced section of the castes and the less advanced. The real question is whether the Commission had material before it which was relevant to enable it to say that those among the castes who were economically better off were not socially backward. Some evidence had been collected by the Commission and it is impossible to say that there was no material before the Commission for reaching the conclusion that it did. Certainly it is not for this Court to weigh the quantum of evidence that was available or sit in judgment on the conclusions reached. The Supreme Court observed in *M.R. Balaji and Others Vs. State of Mysore*, in paragraph 24 thus:

"All that this Court is called upon to do in dealing with the present petitions is to decide whether the tests applied by the impugned order are valid under Article 15(4). If it appears, that the test applied by the order in that behalf is improper and invalid, then the classification of socially backward classes based on that test will have to be held to be inconsistent with the requirements of Article 15(4)."

19. The question is therefore only whether the approach made by the Commission is correct; whether it had kept in mind the guiding principles laid down by the Supreme Court; whether it had material before it; and whether it had taken into consideration any irrelevant or extraneous matters, in reaching the conclusions it did. We are not prepared to say that there has been any flaw in the approach or in the adoption of principles. The Commission had material before it and it has not been influenced by irrelevant or extraneous considerations. 20. The idea behind these reservations is that in course of time the members of the backward castes will progress and attain the same position as the socially and educationally advanced. A passage from the decision of the Supreme Court in *A. Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, may be extracted:

"But all the same the Government should not proceed on the basis that once a class is considered as a backward class it should continue to be backward class for all times. Such an approach would defeat the very purpose of the reservation

because once a class reaches a stage of progress which some modern writers call as take off stage then competition is necessary for their future progress. The Government should always keep under review the question of reservation of seats and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest. The fact that candidates of backward classes have secured about 50% of the seats in the general pool does show that the time has come for a de novo comprehensive examination of the question. It must be remembered that the Government's decision in this regard is open to judicial review."

What the Commission has recommended and the principle accepted by the Government in Ext. P-I is in accordance with what has been stated by the Supreme Court.

21. It is heartening to note that there is some indication of the progress that has taken place among the members of the communities which were originally treated as wholly or at least by and large backward as is seen from paragraph 32 in Chapter V of the Report of the Commission.

22. Counsel then contended that the fixation of the income at Rs. 6000/- for classifying those who are economically better off is quite arbitrary. It was pointed out that at least at the time of the selection with which we are concerned in these cases the sum of Rs. 6000/- was too low a figure. Reasons have been stated by the Commission for fixing the amount at Rs. 4200/- at the time the Commission submitted its report. The Government raised it to Rs. 6000/-. It may be necessary to review this decision. The order of the Government was in 1966 and nearly a decade is now coming to close after the figure of Rs. 6000/- was fixed. We are sure that this matter will engage the attention of the Government and that it will take appropriate factors into consideration in deciding whether the figure should remain at Rs. 6000/- or should be altered. This is a matter which should engage the attention of the Government. But we are not prepared to say that the figure of Rs. 6000/- was fixed arbitrarily. The Commission has given reasons and has referred to relevant material for recommending the figure of Rs. 4200/- and we consider that the Government was justified in raising the figure from Rs. 4200/- to Rs. 6000/-.

28. A number of decisions have repeatedly stated that this matter of delimiting socially and educationally backward classes has created many difficulties and we must bear in mind that the Commission had the same difficulties. It had been guided by the rules that have been laid down by the highest court and it had material before it to reach the conclusion it did. We see no reason to interfere with the Report of the Commission for with the order of the Government.

24. In the light of the above, we set aside the judgment under appeal, allow all the Writ Appeals and dismiss the Original Petitions. We direct the parties to bear their respective costs.