

(1984) 12 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 362 of 1984

Vivek Sood and Another

APPELLANT

Vs

H.P. University and Others

RESPONDENT

Date of Decision : 31-12-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 16, 29

Citation : (1986) 15 ILR HP 95

Hon'ble Judges : P.D. Desai, C.J.;V.P. Gupta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Bhawani Singh, for Respondent No. 1. and P.N. Nag, for Respondents No. 2 and 3., for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.

only portions approved for reporting have been reported

1. The (challenge herein is to the provision for reservation of eight seats for candidates belonging to ?Rural Areas? for admission to the Under-Graduate (M.B.B.S) Course in the Himachal Pradesh Medical College, Shimla (hereinafter referred to as ?the College?) in the academic session 1984-85. In order to consider the challenge, it would be necessary to set out a few facts.

2. The College is run by the State Government and it is affiliated to the Himachal Pradesh University (hereinafter referred to as ?the University?). The College provides a course of study for the M.B.B.S. Degree of the University. The period of course extends over four and a half years followed by one year?s compulsory Rotatory Internship. The students are entitled to the award of the M.B.B. S. Degree only after satisfactory completion of the course and the internship training.

3. The admission to the College is regulated in accordance with the policy framed

by the State Government at the commencement of each academic session. For the current academic session commencing from August 1, 1984, the policy for admission was accordingly formulated and the prospectus issued under the authority of the Health and Family Welfare Department of the State Government contains the material provisions regulating admission on the basis of such policy.

4. The total seats in the College are limited to 65. The seats are distributed into two broad categories, namely, Group 'A'(Reserved) and Group 'B' (Unreserved). Thirty-one and thirty-four seats are comprised in Group 'A' and in Group 'B' respectively. The general condition governing admission to the seats comprised in Groups 'A' and 'B', save and except one category specified in Group 4A is that the children of bonafide Hima-chalis/Himachal Government employees/employees of autonomous bodies wholly or partially financed by the Himachal Pradesh Government alone would be considered for admission. The only exception engrafted on this condition is in relation to nominees of Government of India for whom a specified number of seats to be presently mentioned is reserved in Group 'A'.

5. Thirty-one seats comprising Group 'A' are sub-divided into following categories:

(1) Scheduled Castes .. 9 (2) Scheduled Tribes .. 4 (3) Government of India Nominees .. 5 Note: The Nominees of the Government of India must fulfil the eligibility conditions laid down by the H.P. University for the purpose. But they have not to compete in the P.M.T.

(4) Backward Classes .. 2 (5) Children of Ex-Servicemen who are bonafide residents of H.P. .. 1 (6) Children of Defence Personnel .. 1 (7) Political S .. 1 (8) Rural Areas .. 8

The seats allocated for Backward Classes, Children of Ex-Service-men who are bonafide residents of Himachal Pradesh and Children of Defence Personnel are inter-changeable. If there is a short-fall in Government of India nominations, those seats will go to the Rural Area candidates.

6. An important provision is engrafted on the admission to seats comprising Group 'A'. Such seats are to be treated as so reserved only if no candidate falling under the respective sub-categories is selected on merit in Group 'B'. In other words, if a candidate covered by any of the sub-categories mentioned in Group 'A' gets selected on merit in the seats comprising Group 'B' the seat treated as reserved in the concerned subcategory to which such candidate belongs will be treated as unreserved.

7. The candidates seeking admission to seats comprising Groups 'A' and 'B', except Government of India nominees in Groups 'A', are required to compete amongst themselves in the respective categories. If the required number of candidates are not found eligible for the seats comprising Group 'A', the unfilled seats are to be treated as undeserved and added to Group 'B'.

8. The University holds a competitive examination for admission to the M.B.B. S. Course. The eligibility qualification prescribed for appearing at the competitive examination is that the candidate should have duly qualified in any of the prescribed examinations, namely, Pre-Medical Examination of a University established by law in India, B. Sc. Part I examination of a University established by law in India, Intermediate Science (Medical Group) examination of a Board/University established by law in India, B. Sc. Degree examination of a University established by law in India provided that the candidate must have passed the Pre-Medical or an equivalent examination of a Board/University established by law in India, 104-2 Course Examination of a University/Board, established by law in India or any examination of a University, Board, College or School in a foreign country recognised as equivalent by the Vice-Chancellor. So far as each one of such examinations is concerned, the subjects in which the candidates should have taken such examination and the minimum percentage of marks which he should have obtained are prescribed categorywise. Certain relaxations are provided for Scheduled Castes and Scheduled Tribes candidates in the matter of percentage of marks to be obtained at the qualifying examination(s) for the purpose of admission to the competitive examination. The admission is given strictly on the basis of merit provided the candidate has secured minimum 50 per cent marks in the competitive examination based on written papers. In case of Scheduled Castes and Scheduled Tribes candidates, the requisite minimum percentage marks obtained at such examination should be 40 per cent.

These are some of the important conditions which are prescribed in the Prospectus and which have some bearing on the issue which has been raised for our determination.

9. As earlier stated, the challenge herein is to the reservation of eight seats in the sub-category of 'Rural Areas' in Group 'A'. The Prospectus defines the term 'Rural Areas' as follows:

A candidate must have received education from 1st to 8th standard in a common rural school situated in any village not having any Municipality or Notified Area or Town Area Committee.

The main thrust of the challenge is that the classification between candidates belonging to Rural Areas and other candidates is not rational and that, in any case, it has no nexus with the object sought to be achieved, since all candidates belonging to Rural Areas are not similarly situated and no reservation in favour of persons comprising that class, who are not all similarly situated, can be made consistently with the object which is sought to be achieved. Besides, according to the petitioners, reservation on such basis cannot be regarded as a provision made for the advancement of socially or educationally backward classes of citizens. All candidates who have received education from 1st to 8th standard in a common rural school situated in any village not having any Municipality or Notified Area or Town Area Committee cannot as a class be regarded as belonging to socially and educationally backward classes, because such

candidates are drawn from different strata of society and belong to different categories or classes with the background varying from person to person. It was also the case of the petitioners that in order to be eligible for appearing in the competitive examination a candidate has to be qualified in one of the several qualifying examinations prescribed in the Prospectus and that for appearing in any one of such qualifying examinations, he has to undertake a course of study running into four years after having completed studies upto the eighth standard in a common rural school. Under the circumstances, the education which has been earlier received by such a candidate in a rural school upto the eighth standard loses much of its significance in view of the subsequent educational course of four years undertaken by him in a school/college which may not necessarily be situated in rural areas. Besides, the urban schools as well as the common rural schools have an identical syllabus and the examinations which the students in those two categories of schools have to take are also held by a common authority. The equipment and grant of facilities and the prescribed qualifications of the staff in both categories of schools are identical. The staff is also inter-changeable. On these grounds, inter alia, the petitioners contend that the reservation is violative of Article 14 and that it is not saved by Article 15(4) of the Constitution.

10. Two affidavits-in-reply have been filed on behalf of the Respondent-State and the College authorities. The Director of Medical Education-cum-Principal, H.P. Medical College in the course of his affidavit dated August 7, 1984 has stated that the reservation for Rural Areas candidates is being made since 1980-81 with a view to providing opportunity of medical education to the socially and economically backward classes of the society and in order to accelerate the tempo of education as also to inculcate enthusiasm amongst the rural-based candidates. The reservation has been made, inter alia, with a view to attracting candidates belonging to Rural Areas to medical profession since such medical graduates are likely to stick and to serve the people residing in the difficult and far-flung areas of the State. In this connection it has been submitted that qualified doctors were not available to man ?medical institutions? in the rural areas of the State since medical graduates from urban areas did not want to serve in villages where the modern facilities do not exist. Besides, medical graduates, who have got a rural background and base and are acclimatized to rural oriented sphere, can do better justification to their job in the interior of the State as compared to the urban oriented candidates.

11. In the course of the second affidavit dated November 29, 1984, the Director-cum-Principal has placed on record certain statistical material to justify the reservation. The material is as follows:

Total Rural Urban

(a) Area (in sq. kms.) 55673 55460.6 212.4

(b) No. of villages 16,807

(c) Population 42,80,818 39,54,847 3,25,971

(d) Density of population (per

sq. km.) 77 71 1537

(e) Literacy rate (per cent) .. 42.48 40.42 67.44

On the basis of the above material the reservation is sought to be justified on the ground that the majority of population of the State is found to be residing in rural areas where literacy rate is only 40.42 percent which, as compared to the literacy rate of urban areas, is much below. The mental horizon and general know-how of the students who have received their education in a common rural school situate in a rural area is comparatively poor and even while receiving higher education in towns and cities they often find it difficult to compete with the students belonging to urban areas. It has also been pointed out that the State consists of hilly areas and, judged by the economic factor, the people living in the rural areas are backward since they do not make effective use of resources and large areas of land maintain a sparse, disorderly and illiterate population and inhabitants own property which is small or negligible. There is no possibility of effective territorial specialisation in the absence of means of communication and technical progress. There is traditional apathy for education on account of social and environmental conditions or occupational handicaps. There is lack of educational institutions and educational aids. Having regard to all these factors, the reservation made on the basis of rural areas is wholly justified since it is for the advancement of economically, socially and educationally backward classes of the society.

12. Article 14 of the Constitution prohibits the State from denying to any person equality before the law or the equal protection of the laws within the territory of India. Clause (1) of Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (4) of Article 15 provides that nothing in the said Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Clause (2) of Article 29 provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

13. Their Lordships referred to the decision in M.R. Balaji and Others Vs. State of Mysore,

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14. Their Lordships referred to the decision in State of Andhra Pradesh and Another Vs. P. Sagar,

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15. Their Lordships referred to the decision in *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*,

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16. *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, bears a close resemblance to the case in hand. The principal question in that case was whether the instructions issued by the Uttar Pradesh Government prescribing reservations in favour of candidates from Rural Areas, Hill Areas and Uttrakhand for the purposes of grant of admission to Medical Colleges in the State were constitutionally valid. The State sought to justify the reservations on the ground that they were made for the benefit of socially and educationally backward classes and that they were valid on geographical or territorial basis. The precise submission was that it was a notorious fact that Rural, Hill and Uttrakhand areas were socially backward because of extreme poverty. These areas were also educationally backward because the standard of literacy was poor and there was lack of educational facilities. There was dearth of doctors in these areas and it was necessary to attract students from those areas for admission to Medical Colleges so as to give them impetus to equip themselves as doctors. The geographical, territorial, historical and economic conditions were emphasised to support the classification. The Supreme Court found that the reservation in favour of candidates from the Hill and Uttrakhand Areas were valid but that in favour of candidates from Rural areas was unconstitutional. The relevant observations made in that context and against the background of clauses (1) and (4) of Article 15 are extracted herein below:

The expression 'classes of citizens' indicates a homogeneous section of the people who are grouped together because of certain likeness and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element or common attributes to make them a class of citizens.

The traits of social backwardness are these. There is no social structure. There is no social hierarchy. There are no means of controlling the environment through technology. There is no organization of the society to create inducements for uplift of the people and improvement of economy. Building of towns and industries, growth of cash economy which are responsible for greater social wealth are absent among such classes. Social growth and well being can be satisfied by massive change in resource conditions. High lands and hills are to be developed in fiscal values and natural resources. Nature is a treasury. Forests, mountains, rivers can yield an advanced society with the aid of education and technology.

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 Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the Hill and Uttarakhand 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..... Some people in the rural areas may be educationally backward, some may be socially backward, there may be a few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are Socially and educationally backward..

80 per cent of the population in the State of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are not of the same kind. Their occupation is different. Their standards are different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State..

On behalf of the State it is said that it is necessary to have reservation of seats for the people from rural areas in order to attract people from those areas who are otherwise handicapped in the matter of education, so that they can serve the people in the rural areas on completion of their medical education. In order to attract medical men for service in rural areas arrangements are to be made to attract them. The special need for medical men in rural areas will not make the people in the rural areas socially and educationally backward classes of citizens.

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 homogeneous 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 onus of proof is on the State to establish that the reservations are for socially and educationally backward classes of citizens. The State has established that the people in Hill and Uttarakhand areas are socially and educationally backward classes of citizens. (Para 30).

The Attorney General submitted that if the State failed to establish that the people in rural areas are socially and educationally backward classes of citizens the reservations for rural areas could be sustained on the ground that the

reservations are clearly on geographical or territorial basis. The Attorney General submitted that the reservations for the rural areas was really to obtain students from the source of rural areas..

?. The classification in the present case was said by the Attorney General to encourage higher education to bona fide applicants from the rural areas. It is also said that the candidates from rural areas will have to execute a bond that they agree to serve the Government for five years so that doctors could be provided in rural areas. This was said to be a relevant consideration for supporting the classification..

In the present case, the reservation for the rural area cannot be upheld because there is no classification based on residence between students coming from within the State and Ors. coming from without. The object of providing medical education to students in Uttar Pradesh is to secure the best possible students for admission to these colleges..

The submission of the Attorney General that rural population would be a source for drawing students , cannot be upheld,

... This is a case of discrimination in favour of the majority of rural population to the prejudice of students drawn from the general category. This classification is unconstitutional..

17. Their Lordships referred to the decision in Kumari K.S. Jayasree and Another Vs. The State of Kerala and Another,

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18. Their Lordships referred to the decision in Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others,

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19. Suneel Jatley and Others Vs. State of Haryana and Others, is the last in the series of decisions of the highest Court to which reference may now be made. The decision is very much in the point and, therefore, the relevant facts and observations are required to be set out in extenso.

20. The challenge in the case was to the reservation of 25 seats in favour of candidates coming from Rural Areas and educated in Common Rural Schools for admission to the MBBS/BDS course for 1982 session in the Medical Faculty of the Maharishi Dayanand University, Rohtak. The prospectus issued by the University inviting applications for appearing at an Entrance Test for selection of candidates had made reservation of those seats for ?Rural areas? and the eligibility of a candidate from Rural areas was required to be decided by applying the following criterion:

A candidate must have received education from Class to Class 8 and passed 8th Class examination from a common Rural School situated in any village not having

any Municipality or Notified Area or Town Area Committee.

21. The challenge was that the aforesaid reservation was violative of Articles 14, 15(4) and 29(2) of the Constitution, inasmuch as the classification was arbitrary, unintelligible and unrelated to the objects sought to be achieved and was not saved by Article 15(4). The precise submission was that before seeking admission to the Medical Faculty, even the candidate coming from rural areas and having been educated in common Rural School from] st to 8th standard would have taken further education for a period of four years in an urban school or school which can be compared with urban schools and, therefore, the earlier education from 1st to 8th standard either in urban schools or common Rural Schools both having identical syllabus and examination evaluation prescribed by a common authority was hardly of any relevance. Under these circumstances, the classification on the basis of education in a school in a rural area or an urban area was irrational. The reservation was not sustainable under Article 15(4) because candidates educated in common Rural Schools cannot as a class be said to be socially and educationally backward. It was also submitted that the majority of population in the State, as in the whole country, is residing in rural areas and the reservation in favour of majority would be void ab initio.

22. The challenge was sought to be met by bringing on record material to the effect that a sample survey of the comparative facility/inequalities between the students of the schools situated in the rural and the urban areas at the primary, middle and high school stages in 1979 had revealed that the students studying in common rural schools suffered from serious handicap such as non-availability of electric fans in summer; and, on the onset of rainy season, the difficulty of access to the school resulting in shortening of the academic year in such schools with the consequent disadvantages in their academic achievement as compared to children in the urban schools where the academic session goes undisturbed by extreme summer or rainy season. Most of the common rural schools were found to be ill-housed, ill-staffed and ill-equipped and there was neglect of the upkeep of the health of the students of those schools resulting in their low achievements. Besides, the students coming from urban areas after taking medical education declined to settle down in rural areas and the reservation would help in extending medical facilities solely needed for rural population. On the aforesaid basis and in order to correct the imbalance and the utter handicap suffered by the students studying in common rural schools, students seeking admission were divided into two different classes based on intelligible differentia. Since the object of medical education is to extend medical facilities, where they are needed the most, reservation for candidates coming from rural areas would achieve the object and, therefore, there was a nexus between the classification and the object sought to be achieved thereby.

23. It was pointed out at the outset in the judgment that no attempt was made to sustain the reservation under Article 15(4). The submission was that the reservation was sustainable even on the basis of Article 14 and that the

classification between the students educated in urban and common Rural Schools was founded on an intelligible differentia which had a rational nexus with the objects sought to be achieved.

24. Dealing with the first aspect, namely, whether the classification was founded on an intelligible differentia, the Supreme Court referred to its earlier decision in Pradip Tandon's case and pointed out that reservation for admission in favour of candidates from rural areas, which was challenged as being violative of Articles 14 and 15 and as not protected by Article 15(4), was struck down in that case on the ground that such a reservation cannot be sustained on the basis that the rural areas represent socially and educationally backward classes of citizens and that it appeared to have been made for the majority population of the State and was founded on the place of birth. The accent under Article 15(4) was on classes of citizens socially and educationally backward and, therefore, socially and educationally backward citizens cannot be equated with areas as a whole socially and educationally backward. Some people in the rural areas may be educationally backward and some may be socially backward and there may be few who are both socially and educationally backward but it cannot be said that all citizens residing in rural areas are socially and educationally backward. It was observed that the aforesaid reasoning in Pradip Tandon's case would apply *mutatis mutandis* to the reservation in the case in hand because the reservation was in favour of candidates coming from rural areas. Then followed the pertinent observations in para 9 which are quoted herein below:

. It would at once appear that every candidate seeking admission to medical college must have studied up to the 12th class which would mean that even a candidate coming from the common rural school meaning thereby one who has taken his education upto 8th standard in such a school, yet subsequently he has joined a school which imparts education up to the 12th standard. Such a candidate has joined a school for a period of 4 years after having come out of the common rural school. It is nowhere suggested that this education for 4 years by a student coming from common rural school is in a school which is either unequal to the urban school or comparatively ill-equipped, ill-housed or ill-staffed. The necessary inference that follows from this is that all students seeking admission to the medical college have at least taken education for the last 4 years, in schools which are comparatively similar. What then is the relevance of the education taken from Class 1 to Class 8 for the purpose of admission to a medical college? It was conceded that the specialised subjects which will qualify a student for appearing at the entrance examination for admission to medical college are to be selected from the 11th standard onwards. It was also conceded that the syllabus for students from Class 1 to Class 8 either for urban schools or common rural schools is entirely identical and prescribed by the same authority, and this syllabus includes subjects of general knowledge. It does not provide any specialised knowledge. Therefore, it passes comprehension as to what importance can be attached to education from Class 1 to Class 8 for admission to medical college which is divided by a span of other 4 years that of Class IX to

Class XII (both inclusive) and in respect of which students coming from all schools are similarly situated, similarly circumstanced and similarly placed and similarly treated and exposed to same educational environments without the slightest difference. The question then is can the previous differentiation, if there be any, provide a rational basis for classification? The answer obviously is in the negative..... The selection of specialised subjects has to be made in Classes XI and XII and in respect of education in Classes IX to XII, all students being educated in all schools are similarly situated, similarly circumstanced and similarly placed with no differentiation. The earlier handicap of education in Classes 1 to 8, if there be any, becomes wholly irrelevant and of no consequence and therefore, cannot provide an intelligible differentia which distinguishes persons, say, students seeking admission being grouped together as having been educated in common rural schools from those left out, namely, the rest. It would, therefore, follow as a corollary that classification based on students coming from common rural schools meaning thereby educated up to 1st to 8th standard in common rural schools vis-a-vis students educated in urban schools from 1st to 8th standard would not provide intelligible differentia for founding a classification thereon. The classification in such a situation will be wholly arbitrary and irrational and therefore the reservation based on such a classification would be constitutionally invalid.

Proceeding further the Supreme Court observed in paras 11 and 12 as follows:

. ... the differentia on which the classification is founded appears to us arbitrary and irrational. How arbitrary and irrational it is, can be demonstrably established. In order to take advantage of the reservation students from nearby urban areas can join common rural schools on the periphery of urban agglomeration. And all rural schools without an exception cannot be condemned as ill-housed, ill-staffed and ill-equipped..... Further the basis of classification based on education upto 8th standard is wholly irrational. And it has no nexus to the object sought to be achieved of providing extra facility to students coming from rural schools to enter medical college..

What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from 1st to 8th standard are at a comparative disadvantage to those taking education in urban schools in the same standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education, equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instruction from 1st to 8th standard. However, as pointed out earlier, the knowledge acquired by the students while taking instruction in Classes I to VIII has hardly any relevance to his being equipped for taking the test for entrance to the medical college. The real challenge would come in Standards XI and XII. In this behalf all students those coming from common rural schools and urban schools are similarly placed and similarly situated and yet by a reference to a past event wholly unrelated to the objects sought to be

achieved, they are artificially divided..

The submission that the candidates coming from Rural areas may return to their childhood habitat after obtaining the medical qualification and thus help extend efficient medical service to the rural areas was rejected on the basis of the following reasoning in para 13:

. even students educated in common rural schools would be joining urban schools for four years before going to medical college and then spend about five years in medical college. There is no guarantee save a wishful thinking that they would return to rural areas. This is too flimsy a material to sustain classification.

The reservation in favour of Rural areas was, therefore, found to be constitutionally invalid as it was held to be not founded on intelligible differentia and at any rate it had no rational nexus to the object sought to be achieved.

25. It would be pertinent to mention at this stage that the factual matrix in Suneel Jatley's case and in the present case is substantially similar, if not entirely identical. The reservation in that case, as here, was in favour of candidates coming from Rural areas. The definition governing the identification of such candidates is also similar, save and except that there was an additional requirement in Suneel Jatley's case, namely, that the candidate should have passed the 8th Class examination from such a common rural school. The basic educational pattern in respect of the candidates in Suneel Jatley's case as well as in the present case is also identical. There is no dispute that factors such as an identical syllabus and examination evaluation scheme for rural schools and urban schools, the requirement of a student to clear the 12th standard examination or a similar examination before seeking Entrance Test to the medical college, irrespective of whether he had been educated in an urban school or in a rural school, comparative facilities and inequalities in academic pursuits, vagaries of weather etc. are all present in both these cases. Yet another factor which is common in both the cases is that a substantial majority of the population in both the States resides in the rural areas; Out of the total population of 42,80,818 souls in Himachal Pradesh, 39, 54, 847 reside in rural areas as against 3,25,971 residing in urban areas. Against the factual background aforesaid, and similarity of circumstances obtaining in both the cases, the decision in Suneel Jatley's case, insofar as it holds that the reservation made in favour of candidates belonging to a rural areas is violative of Article 14, must be regarded as clinching the issue. Such a reservation must be regarded as unconstitutional and violative of Article 14.

26. The reservation for candidates belonging to the rural areas in one form or the other has been made in this State since a long time and on three different occasions this Court was called upon to examine the validity of such reservation.

At this stage, it would be relevant to refer to the decisions rendered in those cases.

27. In *Sukhvinder Kaur Vs. State of Himachal Pradesh and Others*, the challenge, inter alia, was directed against 12 seats reserved in the Medical College in question in favour of 'Candidates who have passed their Matriculation or Higher Secondary Examination from the schools located in rural areas' in the session 1971-72. The challenge was on the ground that it violated Articles 14, 15 and 16 of the Constitution. In the context of the said challenge, a Division Bench of this Court found in para 12 as follows:

..... As regards this it would suffice to say that this is a reservation for children coming from schools in the rural areas. This reservation does not appear to be unreasonable inasmuch as the children in the rural areas who usually attend such schools are socially, economically and educationally poor and they cannot compete with the children of their age-group coming from the urban areas and, therefore, the reservation is valid.

28. The decision in *Sukhvinder Raw's* case noticed and commented upon in *Suneel Jaitley's* case in the following words in para 15:

Before we conclude, a reference to *Sukhvinder Kaur Vs. State of Himachal Pradesh and Others*, may be made. In that case the High Court upheld reservation of 12 seats for candidates who have passed Matriculation or Higher Secondary examination from schools located in the rural areas. The aforementioned reservation was upheld by merely observing that it does not appear to be unreasonable inasmuch as the children in the rural areas who usually attend such schools are socially, economically and educationally poor and they cannot compete with the children of their age-group coming from the urban area. The judgment does not refer to the material on which the finding was based that the children attending the schools in rural areas cannot compete with children of the same age-group coming from the urban areas. That apart the situation in that case was that the students took education upto the Higher Secondary examination in the schools situated in the rural areas and had thereafter straightway to compete for entrance to the medical college with students coming from urban areas. Such is not the situation before us. As pointed out earlier, in the instant case, the students in whose favour the reservation is made took education only upto the 8th standard in common rural school and for the last 4 years they were on par in every respect with students coming from urban areas. Therefore, this decision is of no assistance.

29. In our opinion, in light of the principles enunciated in and the elaboration of law on the subject as found in *Pradip Tandon's* case as well as in *Suneel Jaitley's* case, both of which dealt with the validity of reservation of seats in favour of candidates from rural areas, the decision in *Sukhvinder Kaur's* case, with respect, cannot be regarded as having laid down the correct law. It cannot be overlooked in this connection that the judgment in *Sukhvinder Kaur's* case does not indicate whether any material was placed before the Court to sustain the classification between the candidates who had passed the Matriculation or Higher Secondary examination from the schools located in rural areas and candidates

who had passed the same or similar examinations from the schools located in urban areas. There is also no indication available from the judgement whether any factual data was made available to the Court for the purposes of establishing a rational nexus between the classification and the objects sought to be achieved by the rules governing admission. The reasoning on the basis of which the reservation was upheld is, with respect too brief to indicate whether Court's attention was precisely drawn to the provisions of Clauses (1) and (4) of Article 15 and to the requirements which are to be satisfied before Clause (4) could operate to save the reservation. Under the circumstances, the decision in Sukhvinder Kaur's case cannot be regarded as rendering any assistance- on the point under consideration.

30. In Rakesh Kumar and etc. Vs. State of Himachal Pradesh and Others, , the challenge, inter alia, was to the reservation of 9 seats in favour of the candidates coming from rural areas for the purposes of admission to the Medical College. The definition of the expression "Rural areas" was, insofar as it is relevant for the present purpose, identical in terms. The Court was, however, not required to go into the validity of the challenge since, in that case, all the nine candidates who were selected for admission against the said category were entitled to be admitted even on the basis of their merit (see para 14).

The decision has, therefore, no direct relevance on the issues which arises for determination herein. The only significant fact which is required to be noted is that in that particular case all the nine candidates from the rural areas had qualified for admission even on the basis of merit. This circumstance illustrates how illusory or imaginary is the assumption regarding the alleged educational and social backwardness of the rural area candidates as a class.

31. In Rahul Verma and Another Vs. Himachal Pradesh University, Simla and Others, , the reservation of seats for admission to the Medical College, in favour of the candidates from the rural areas, was, inter alia, challenged. The challenge, however, was not considered and adjudicated upon since it was found that no one had been allotted seats in the said quota (see para 41). Reference was, however, made to the decision in Sukh-vinder Kaur's case in which such reservation was upheld and it was observed in the passing that the term "Rural area" had been defined in the prospectus. The decision again is of no assistance.

32. Against the aforesaid background, the question which falls for consideration is whether the reservation under challenge herein meets with the requirements of Articles 14 and 15 of the Constitution. We have earlier pointed out that so far as challenge based on Article 14 is concerned, the decision in Suneel Jaitley's case is on all fours and that it clinches the issue in favour of the petitioners. The fact situation is substantially similar if not entirely identical. In fact it can be said with justification that there was at least some material in Suneel Jaitley's case to support a similar reservation whereas, in the instant case, there is no such material placed on record. Under the circumstances, without elaborating further on this aspect of the case, it must be held that the reservation does not meet the

challenge based on Article 14.

33. The question which still survives for consideration is whether the reservation could be sustained on the basis of Clause (4) of Article 15 which enables the State to make, inter alias, 'any special provision for the advancement of any socially and educationally backward classes of citizens?'. The long line of decisions to which we have referred provide sufficient guidelines for deciding this question. Briefly stated, the principles which emerge from these decisions are as follows:

(1) The backward classes for whose improvement special provision is contemplated by Clause (4) of Article 15 are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes;

(2) In order to satisfy the requirements of the said Clause, the backwardness must be both social and educational and it must be in relation to a class or classes of citizens;

(3) The problem of social and educational backwardness is by and large the problem of rural India; it cannot be overlooked at the same time, however, that so much has been accomplished during the past 25 years for the amelioration of the conditions of the rural population that rural India of a past generation has no relevance today; some people in the rural areas still may be educationally backward, some may be socially backward, there may be a few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward ; only such classes of citizens who are really occupying a socially and educationally backward position in rural areas are, therefore, covered by Clause (4) of Article 15;

(4) 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; the concept of backwardness in Clause (4) of Article 15 is not intended to be relative in the sense that classes who are backward in relation to the most advanced classes of society should be included in it; in identifying backward classes, therefore, one has to guard one self against including therein sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated ;

(5) Sociological, social and economic considerations come into play in solving the complex problem of determining who are socially backward classes; broadly speaking, amongst the factors which lead to social backwardness are deplorable poverty, caste factor, pursuit of occupations which are treated as inferior according to conventional beliefs, place of habitation, absence of social structure or social hierarchy, lack of organisation to create inducements for uplift of the people and improvement of economy, non-existence of control of the environment and want of development and exploitation of natural resources with

the aid of education and technology etc;

(6) The factors which contribute to educational backwardness, inter alia, are traditional apathy for education on account of age-old customs and social and environmental conditions such as poverty, ignorance, superstition, prolonged social suppression, occupational handicaps and lack of educational institutions and educational aids;

(7) The expression 'class' means a homogeneous section of the people who are grouped together because of certain likeness or common traits and who are identifiable by some common attributes, such as, status, rank, occupation, residence in a locality, race, religion and the like; however, neither caste nor religion nor place of birth will be the uniform element or common attributes to make a class of citizens; all citizens residing in rural areas cannot be regarded as socially and educationally backward since they do not constitute a homogeneous class by themselves in view of the fact that they are not of the same kind; their occupations are different, their standards are different, their lives are different; rural element does not necessarily make them a class; to suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State;

(8) An elaborate investigation and collection of data and examining the said data in a rational and scientific way is necessary for evolving a proper criterion for determining which classes are socially and educationally backward; on the basis of such data, it is the function of the State to determine which group of persons can be classified as socially and educationally backward but in taking executive action to implement the policy of Clause (4) of Article 15, it is necessary for the State to remember that the policy which is intended to be implemented is the policy which has been declared by Article 46 and the preamble of the Constitution; the executive action taken by the State must be based on an objective approach free from all extraneous pressures; reservation may be adopted to advance the interests of weaker sections of society, but in doing so, care must be taken to see that deserving and qualified candidates are not excluded from admission to higher educational institutions;

(9) If any reservation made in favour of socially and educationally backward classes is challenged as constitutionally invalid, the onus of proof is on the State to establish that the reservation meets with the requirement of Clause (4) of Article 15; the mere assertion by the State that it had taken into consideration the criteria which had been adopted by the Courts for determining who the socially and educationally backward classes of the society are, or that the authorities had acted in good faith in determining the socially and educationally backward classes of citizens, would not be sufficient to sustain the validity of the claim; by merely asserting that action was taken after full consideration of the relevant evidence and criteria which have a bearing thereon, and was within the exception, the jurisdiction of the Courts to determine whether by (taking the action a fundamental right has been infringed is not excluded; the Court's

jurisdiction is to decide whether the tests applied are proper and valid and whether the classification of socially and educationally backward classes based on those tests is consistent with the requirements of Clause (4) of Article 15; while arriving at the decision, the Court has to bear in mind that clause (4) is an exception to Clause (1) of Article 15 and that being an exception, it cannot be extended so as in effect to destroy the guarantee of Clause (1) and also that in our country, where social and economic conditions differ from State to State, it would be unreal to expect absolute uniformity of approach.

34. The catena of decisions also emphasises that poverty, though relevant, is not the exclusive test, for, a very large proportion of the population in India would have to be regarded as socially and educationally backward on account of poverty. Besides, if reservations are made only on the ground of economic considerations, an untenable situation may arise because in sectors which are recognised as socially and educationally advanced there may be large pockets of poverty. The decisions also highlight the point that the rural India of yesterday has no relevance today. Facilities for education, which were practically non-existent a generation ago are now available at the doorstep in villages. Judicial notice can be taken of the fact that rural areas are now studded not only with Primary but also with Secondary Schools at comparatively easy distances and in some of the rural areas or areas adjacent thereto, even Colleges are established. The schools at the Primary, Middle, High and Higher Secondary level with identical syllabus and substantially similar facilities as in urban areas are found in the rural areas now. The validity of reservation in favour of rural area candidates in the matter of admission to institutions of higher or specialised learning has to be judged against the aforesaid background;

35. Even in Himachal Pradesh, there has been a substantial improvement in the educational field in some of the rural areas. Schools at different levels and even Colleges in those areas or within an approachable distance therefrom have been established in the last few years. This fact is incapable of being disputed and is, in fact, not disputed. The material on record shows that the literacy rate in the rural areas of the State is 40.42 per cent. Granting that literacy and education are not synonymous, the percentage of literacy is an affirmative indication of the fact that the traditional apathy, if any, for education on account of social and environmental conditions or occupational handicaps in the rural areas is giving way to a new awareness in the direction of the value of education. Besides, quite a few persons owning large apple orchards and farms and enjoying status in the society live in some of the rural areas of the State in comfortable economic conditions. This is again a fact which is incapable of being disputed and is, in fact, not disputed. It would thus appear that the rural sector in the State, as a whole, cannot be regarded as socially, educationally or economically backward: The twin test of social and educational backwardness thus breaks down when it is applied as a whole to the rural areas of the State.

36. The affidavits in reply filed on behalf of the Respondents-State and the

College authorities are full of cliché and apparently contain generalisations expressed in a language which is borrowed from some of the decided cases. No precise material gathered on the basis of any scientific and systematic investigation has been placed on the record of the case by the Respondents to justify the reservation on the basis of the social and educational backwardness of the candidates who have received education from 1st to 8th standard in a common rural school situated in any village not having any Municipality or Notified Area or Town Area Committee. In this connection it is worthwhile to note that admittedly there is an identical syllabus and examination evaluation scheme for rural schools and urban schools in the State and that a candidate has to pass the 12th standard examination or a similar or equivalent examination before appearing in the competitive examination for admission to the medical college, irrespective of whether he had been educated upto 8th standard in an urban school or a rural school. The alleged comparative disadvantages and backwardness in the matter of educational background of a candidate from the rural area seeking admission to the medical college is thus more of a myth than a reality. This conclusion is fortified by the fact that in Rakesh Kumar's case it was found that all the nine candidates from the rural areas had qualified for admission to the medical college even on the basis of merit and in the present case also seven out of the eight candidates, who are covered by the category in question, have secured admission on the basis of merit. There is thus no warrant to group together all the candidates who have received education from 1st to 8th standard in a common rural school situated in any village not having any Municipality or Notified Area or Town Area Committee and to treat them as belonging to a homogeneous class which can be regarded as socially and educationally backward. The rural element which is the only common factor does not necessarily make them a homogeneous class having common traits, attributes or likeness leading to social and educational backwardness.

37. There is yet another aspect which is relevant and hence incapable of being overlooked. The data supplied in the second affidavit of the Director-cum-Principal shows that the rural area of the State consists of 55460.6 square kms. as against 212.4 square kms. comprising the urban area. 39,54,847 persons are the inhabitants of rural area in which are situated 16,807 villages as against 3,25,971 persons living in the urban area. The reservation in favour of candidates who have received education from 1st to 8th standard in common rural schools situated in any village thus amounts to reservation for the majority of the population of the State. Reservation in favour of such majority by treating it as forming a homogeneous class is impermissible.

38. For the reasons given in Pradip Tandon's case and Suneel Jaitley's case, the justification for the reservation on the ground that candidates belonging to rural areas are likely to stick and to serve the people residing in the difficult and far-flung rural areas of the State as and when they graduate in medicine and thereby they will fulfil the need of qualified doctors in the medical institutions situated in the rural areas of the State also cannot be upheld. Apart from the fact

that there is no guarantee save a wishful thinking that they would return to the rural areas, the special need for medical men in rural areas will not make the people in the rural areas socially and educationally backward class of citizens.

39. On the facts and in the circumstances of the case and against the background of the well settled principles, it is not possible to uphold the reservation in favour of the rural area candidates on the basis of clause (4) of Article 15.

40. An ingenious attempt was made on behalf of the Respondents to sustain the reservation on the ground that rural area candidates are truly candidates belonging to the hilly areas since large tracts of the inhabited portions in rural areas comprise hilly area and that, therefore, in substance and reality the reservation being for candidates coming from the hilly tracts or regions, the same was constitutionally valid as held in Pradip Tandon's case. The argument has been stated merely to be rejected. If the reservation was intended to be made only for the candidates belonging to the hilly areas or tracts, there was nothing to prevent the State Government from identifying such areas on the basis of a proper investigation and from making reservation for the candidates who have received education in common schools situate in such hilly tracts or areas. The reservation has been made instead for rural areas which expression, as defined, takes in not only rural areas situate in hilly tracts but also such areas situate at much lower heights. It is well to remember in this connection that the whole of the territory of the State is not hilly. In several districts there are rural areas which are situated in a terrain which cannot be termed as hilly. To illustrate, parts of Nalagarh tehsil in Solan district, of Tehsil Amb in Una district, of Paonta Sahib region in Sirmaur district, and of Tehsil Nurpur in Kangra district comprise rural areas which cannot be regarded as hilly tracts. The candidates hailing from such areas would qualify as rural area candidates under the existing provision although they do not belong to hilly areas or tracts. Since the reservation made in the terms set out in the Prospectus does not identify or group together only those candidates who have received education in common schools in hilly tracts or areas, the submission cannot be accepted.

41. Before parting with the case, the Court would like to observe that in light of the Preamble and Article 46 and Article 15(4) of the Constitution, it is the function and duty of the State to evolve a rational policy for promoting, with special care, the educational and economic interests of the weaker sections of the people and making special provisions for the advancement of socially and educationally backward classes of citizens. Clause (4) of Article 15, which specifically authorises the making of special provision for the advancement of the classes and communities there contemplated, even if such provision is inconsistent with the fundamental rights guaranteed under clause (1) of Article 15 or clause (2) of Article 29, can be legitimately used by the State both as a sword and as a shield in order to protect them from social injustice and to provide them equality of opportunity. Reservations in the matter of admission to institutions of

higher education are one of the means to achieve the said end. However, it may well be that there may be other ways and means of achieving the same result. In a country like our, where socio-economic conditions differ from State to State, absolute uniformity of approach in regard to such measures is not practicable. In this connection, the Court expresses its respectful agreement with the following observations made in *M.R. Balaji's case* (supra) at page 664 of the report:

It appears that the Maharashtra Government has decided to afford financial assistance, and make monetary grants to students seeking higher education where it is shown that the annual income of their families is below a prescribed minimum 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. An attempt can also be made to start newer and more educational institutions, polytechnics, vocational institutions and even rural Universities and thereby create more opportunities for higher education. This dual attack on the problem posed by the weakness of backward communities can claim to proceed on a rational, broad and scientific approach which is consistent with, and true to, the noble ideal of a secular welfare democratic State set up by the Constitution of this country. Such an approach can be supplemented, if necessary by providing special provision by way of reservation to aid the Backward Classes and Scheduled Castes and Tribes.

42. So far as reservations are concerned sufficient guidelines have been laid down in several decisions of the highest Court on the basis of which a rational classification can be made so as to sustain reservation in favour of socially and educationally backward classes. Tests for determining whether a particular class or group of persons can be regarded as socially and educationally backward have been, explicitly laid down in the extracted portions of several decisions cited hereinabove. All that the State is required to do is to make a proper investigation and to collect material and data in light of those guidelines and tests and to identify on that basis the precise group or class of persons in whose favour reservation for admission to educational institutions can be validly made. So far such an attempt has not been made although there appears to be justification for such reservation in a State like ours where classes or groups of persons, who can be regarded as socially and educationally backward, are capable of being readily identified and for whom reservation can be validly made to subserve the constitutional goal.

43. It is pertinent to point out in this connection that instances are not wanting in the decided cases where reservations made for admission to educational institutions have been upheld in different situations and context. *R. Chitralakha and Another Vs. State of Mysore and Others*, reservation of seats for admission in professional and technical colleges and institutions made in favour of backward classes who were identified on the basis of economic conditions and occupations, as and by way of a temporary measure pending an elaborate study, was found to

be not impinging upon clause (4) of Article 15. In Pradip Tandon's case (supra) reservation made in favour of the Hill and Uttarakhand areas in Uttar Pradesh was upheld on the ground that inhabitants of those areas constituted socially and educationally backward classes of citizens since large areas comprised in the region maintained a sparse, disorderly and illiterate population owning small and negligible property and having traditional apathy for education on account of social and environmental conditions or occupational handicaps and lack of educational institutions and educational aids. In K.S. Jayasree's cases (supra), reservation of seats in educational institutions in favour of the lower income limit groups of certain communities was held valid on the ground that the basis of reservation was not income but social and educational backwardness. Be it stated that in that case the reservation was based on the report of a Commission which had identified as backward certain groups or classes of persons on the consideration of means-cum-caste/community test. In Nishi Maghu's case (supra), reservation made in favour of the candidates belonging to certain low social castes who were found to be educationally and economically, extremely backward and who were accordingly identified by a Committee was upheld on the ground that the classification was with reference to the nature of occupations which the people belonging to those castes pursued. The classifications based on areas adjoining actual line of control and bad pockets was also upheld in that case on the ground that those areas were really backward areas and the residents of those areas were indisputably socially and educationally backward.

44. These are some of the illustrative cases of valid reservations founded on constitutionally permissible classification and they should provide sufficient guidelines to the State in making effective reservation for really backward classes of persons in our State.

45. In the result, the writ petition succeeds and it is allowed. The impugned reservation of eight seats in Group 'A' under the heading 'Rural Areas' read with the definition of the said expression is struck down as violative of Article 14 and as not saved by Article 15(4) of the Constitution. Be it clarified, however, that out of the eight candidates covered by this category, seven are stated to have secured admission on the basis of merit and that consequently seven seats falling within this category are stated to have been declared undeserved. So far as those seven seats and candidates are concerned, therefore, the decision rendered herein would not have any present and practical effect and the admission given to those candidates would not be affected in any manner as a result of this decision. One candidate belonging to this category, however, does not qualify for admission on the basis of merit. Under the circumstances, in view of the decision rendered herein, he would not be entitled to admission against the reserved seat for 'Rural Areas'. The said reserved seat, which will consequently stand released, will be added to the seats already allotted to Group 'B' and it will be filled in accordance with the rules governing admission to seats falling within Group 'B'. The competent authorities will take action in the direction of filling in such seat in accordance with the above directions as

expeditiously as possible but not later than the day on which the Medical College reopens after the winter vacation so that the seat does not remain unfilled and the candidate ultimately securing admission in the seat does not suffer on the academic side.

46. Rule made absolute accordingly with no order as to costs.