State of Andhra Pradesh and Others
Vs
U. S. V. Balram, Etc

CASE NUMBER

Civil Appeals Nos. 901- 903 of 1971

EQUIVALENT CITATION

1972-(001)-SCC-0660-SC
1972-(003)-SCR-0247-SC
1972-AIR-1375-SC

CORAM

C. A. Vaidialingam
K. K. Mathew

DATE OF JUDGMENT

28.01.1972

JUDGMENT

VAIDIALINGAM, J.-

1. These three appeals, in which the State of Andhra Pradesh is the first appellant, by special leave, are directed against the judgment and order, dated May 13, 1971, of the Andhra Pradesh High Court, in a batch of writ petitions, striking down Rule 9, in the rules relating to the selection of candidates for admission to the Integrated M.B.B.S. Course in the Government Medical Colleges in the Andhra Pradesh area, issued under G.O. No. 1648/Health, dated July 23, 1970, as also G.O. No. 1793/Education, dated September 23, 1970, regarding reservation of seats in professional colleges, for Backward Classes together with the annexure to the said notification containing the list of Socially and Educationally Backward Classes. The Additional Director of Medical and Health Services, Hyderabad and Principal, Government Medical College, Guntur, are also Appellants Nos. 2 and 3 respectively in the appeals.

2. The Government of Andhra Pradesh by G.O. No. 1648/Health, dated July 23, 1970, announced rules for the selection and admission of students to the Integrated M.B.B.S Course in

the Government Medical Colleges, in the Andhra area. The rules provided a pattern of allotment of seats by reference to certain qualifying examinations. The candidates eligible for admission to the Integrated M.B.B.S. Course, being largely taken from the students who had passed the qualifying examination for the Pre-University Course and those who had passed the Higher Secondary Course (Multipurpose), the rules provided for a pattern of earmarking seats for the students according to the qualifying examination taken by them. It may be mentioned at this stage that the H.S.C. Course (Multipurpose) students are called Multipurpose candidates since they pass their examinations from Multipurpose Schools.

3. Rule 8 dealt with the pattern of allotment of seats in respect of qualifying examination. Rule 9 outlined the procedure for selection. Rule 10 provided that all the reservations would be subject to the order of merit of marks obtained in the entrance test by the students in the relevant category of reservations, namely, P.U.C. and H.S.C. Rule 24 provided that the selections made under the rules will be subject to any rules or orders that may be made in regard to the reservation of seats for Socially and Educationally Backward Classes of students, having regard to the recommendations made by the Andhra Pradesh Backward Classes Commission. But there was a condition that such rules or orders should have been made by the Government before the finalisation and communication of the selection of candidates.

4. On June 20, 1970, the Backward Classes Commission appointed by the State, a couple of years back, made its report regarding the various categories of persons who are to be treated as belonging to Backward Classes and recommended reservation of 30% of seats to persons belonging to the Backward Classes. The State by G.O. No. 1793/Education, dated September 23, 1970, announced reservation of 25% of the seats in the M.B.B.S. Course for candidates belonging to the various Backward Classes enumerated therein on the basis of the report of the Backward Classes Commission. In or about August, 1970, the validity of the entrance test provided under the rules issued by the G.O. No. 1648 of 1970 was challenged before the High Court of Andhra Pradesh in a batch of Writ Petitions Nos. 3859, 3881, 3955 and 4052 of 1970. The challenge was on the ground that the State had no power or authority to determine admission by reference only to the result of the entrance test thereby ignoring the results of the qualifying examinations taken by the candidates. Those writ petitions were dismissed by a learned Single Judge of the High Court on September 5, 1970. But on Letters Patent Appeals by the candidates, a Division Bench of the High Court on September 18, 1970, reversed the order of the Single Judge and struck down the provisions regarding holding of entrance test for admission to Government Colleges as illegal. The State came to this Court in Civil Appeals Nos. 2161-A and 2161-B of 1970. This Court by its judgment, dated February 11, 1971, allowed the appeals holding that the Government could hold an entrance test for selection eligible candidates for admission to the medical course in the colleges run by the Government. The said decision in State of Andhra Pradesh and Another v. Lavu Narendra Nath and Others. [(1971) 1 SCC 607].

5. On the basis of the decision of this Court in the above appeals the Government on February 12, 1971, published an additional list of candidates selected on the basis of the entrance test for

admission to the Integrated M.B.B.S. Course.

6. On December 27, 1970, the respondent in Civil Appeal No. 901 of 1971, who was a P.U.C. candidates filed in the High Court Writ Petition No. 6090 of 1970 challenging the validity of the classification of candidates into two categories as P.U.C. and H.S.C. (M.P.) and reserving 40% of seats to the latter as also the G.O. No. 1793/Education, dated September 23, 1970, specifying certain classes as being Socially and Educationally backward and providing for them a reservation of 25% of seats in the colleges. Certain other candidates belonging to the H.S.C. (M.P.) category had filed writ petitions challenging G.O. No. 1793 of 1970, regarding the reservation made for the Backward Classes. The P.U.C. candidates contended that the classification and reservation of 40% of seats for the H.S.C. (M.P.) candidates was violative of Article 14 of the Constitution and that it was arbitrary and illegal. In particular he contended that he has obtained more marks than some of the H.S.C. (M.P.) candidates at the entrance test and that he was entitled to admission in preference to such candidates. Both the P.U.C. as well as the H.S.C. (M.P.) writ petitioners attacked G.O. No. 1793 of 1970, regarding reservation of 25% of seats for the Socially and Educationally Backward Classes as violative of Article 15(1), read with Article 29 and that it has not been saved by Article 15(4). According to them classification of Backward Classes was not made on any reliable material and in the enumeration of such classes, the various principles laid down by this Court have not been given due regard.

7. The State contested the writ petitions on various grounds. Regarding Rule 9 of G.O. No. 1648 of 1970, the stand taken by the State was that the P.U.C. and H.S.C. (M.P.) candidates formed two distinct categories and they did not form part of the same class. It was further contended that the State was entitled to lay down the principles regarding the source from which the candidates are to be selected to the medical colleges which are run by the Government and that in providing for equal distribution of seats to the P.U.C. and H.S.C. (M.P.) candidates, no discrimination has been made and there has been no violation of Article 14.

8. Regarding G.O. No. 1793 of 1970, the State referred to the appointment of a high powered commission to exhaustively investigate and report as to the persons who are to be considered as Backward Classes for the purpose of reservation being made in their favour. The Commission had gone into the matter and after considering the educational and social backwardness of the various classes of citizens in the State in the light of the various principles and test laid down by this Court, had submitted its report on June 26, 1970, enumerating the various classes of persons who are to be treated as Backward Classes. The report accepted by the Government had also given the reasons for such classes being treated as backward.

9. The High Court by its judgment, under attack, allowed the writ petitions and also directed the State to give admissions to the writ petitioners to the Ist Year Integrated M.B.B.S. Course. The High Court has held that the only basis for selection for Ist Year Integrated M.B.B.S. Course in relation to the H.S.C. and P.U.C. candidates is the marks obtained by them at the entrance test provided by the rules framed under G.O. No. 1648 of 1970. According to the High Court when once rules have been framed in that manner, the selection of candidates from these categories

must only be of those who have obtained the highest number of marks in the said list irrespective of the fact as to which category they belonged. In view of the fact that the selection is sought to be made by a earmarking 40% of seats to the H.S.C. (M.P.), the latter are having an unfair advantage over the P.U.C. candidates, who will be denied admission, though they have obtained higher number of marks. In this view the High Court held that Rule 9 providing for reservation of 40% to the H.S.C. (M.P.) framed under G.O. No. 1648 of 1970 was illegal as being discriminatory and as such offends Article 14 of the Constitution. The said rule was struck down in consequence.

10. Regarding the enumeration of Backward Classes by the Backward Class Commission, and the order of the Government, G.O. No. 1793 of 1970, reserving 25% of seats in the Colleges, the High Court held that the Government order violates Article 15(1), read with Article 29 and that the reservation was not saved by Article 15(4). It is the view of the High Court that proper investigation and collection of data have not been done by the Commission in accordance with the principles laid down by this Court in its various decisions. On the other hand, the High Court has held that the Commission has merely enumerated the various persons belonging to a particular caste as Backward Classes, which is contrary to the decisions of this Court.

11. We will deal further with this aspect when we advert to the validity of G.O. No. 1793 to 1970. Suffice it to say that the High Court struck down the said Government Order as violative of Article 15(1) and that it was not saved by Article 15(4) of the Constitution. The High Court declared that the writ petitioners were entitled to be admitted to the Integrated M.B.B.S. Course in the Medical Colleges in the Andhra area.

12. Before us, on behalf of the appellants Mr. S. V. Gupte, learned counsel has attacked the findings of the High Court striking down Rule 9, issued under G.O. No. 1648 of 1970, as well as the reservation of seats made in the Professional Colleges for the Backward Classes by G.O. No. 1793 of 1970.

13. We will first deal with the validity of Rule 9 issued under G.O. No. 1648 of 1970 reserving 40% of seats for the H.S.C. (M.P.) candidates. Before we consider the contentions urged in that regard by Mr. Gupte, on behalf of the State and Mr. Tarkunde, on behalf of the respondents, it is necessary to broadly refer to some of the material rules issued under G.O. No. 1648 of 1970. The rules were issued as annexure to this Government Order. It was specifically stated in the said Government Order that the rules specified in the annexure have to be followed in respect of admissions of students to the Integrated M.B.B.S. Course in the Government Medical Colleges in the Andhra area including Bhadrachalam Division of Khammam District and Munagala Division of Nalgonda District from the academic year 1970-71.

14. Rule 1 referred to the availability of 550 seats in the Ist Year Integrated M.B.B.S. Course in the four Medical Colleges, referred to therein in the Andhra area. Rule 2 dealt with reservation of seats, viz., for candidates outside the State, candidates distinguished in N.C.C., Presidents' Scouts and Guides and children of Ex. Servicemen and Armed personnel; and candidates

belonging to Scheduled Caste and Scheduled Tribes, women candidates, etc. Rule 3 deals with the age and educational qualifications. Regarding educational qualifications it is provided that candidates possessing the minimum qualifications of H.S.C. (M.P.), I.S.C., P.U.C. and A.I.H.S.C. or equivalent qualifications are eligible to appear in the Entrance Test. But there was a proviso to the effect that in the qualifying examination the candidates should have taken up physical sciences and biological sciences and must have obtained not less than 50% of marks in those subjects put together. But in respect of candidates belonging to Scheduled Caste and Scheduled Tribes, the provision is that they should obtain not less 40% of marks in those subjects put together in their qualifying examination.

15. Rule 4 dealt with basis and method of admission. Clause (i) of this rule provides that all candidates who have applied for admission and are found eligible will be required to take Entrance Test to be conducted by the Director of Medical and Health Services. The said rule also dealt with the holding of the Entrance Test at the centres specified therein. Clause (v) specifically provided that the Entrance Test will consist of four papers of 50 marks each in (a) subject of Physical Science (Chemistry and Physics), (b) subject of Biological Science (Zoology and Botany). Clause (vi) provided for the examinations in Chemistry and Physics being held in the morning and the remaining two, i.e., Zoology and Botany, in the evening session and that answers will be written in separate answer books and that the Entrance Test will be conducted in a single day.

16. The said rule also provided for the standard of test, type of the test and the Medium of the test.

17. Rule 6 deals with the method of admission. It provides that based on the result of the Entrance Test, a separate Master List of eligible candidates will be prepared in order of merit and that the selection will be made keeping in view the various reservations mentioned therein. It may be mentioned at this stage that the reservations referred to therein are for Scheduled Castes and Scheduled Tribes, Women candidates, children of Ex-Servicemen, etc. There is no reservations referred to therein either of H.S.C. or P.U.C. candidates.

18. Rule 7 deals with the distribution of seats. The total number of seats available is stated to be 550. But the actual number of seats available to be filed up on the basis of merit at the Entrance Test is given as 532. The said rule also provides for the distribution of seats to certain reserved groups such as Scheduled Castes and Scheduled Tribes, Women candidates, etc. Here again there is no reservation for H.S.C. or P.U.C. candidates.

19. Rule 8 deals with the pattern of allotment of seats in respect of qualifying examination. The seats are distributed as follows : 40% each to Multipurpose and P.U.C. candidates; 5% to M.Sc. and B.Sc. candidates; 4% for N.C.C., President's Scouts and Guides and Ex-Servicemen and 11% strictly in the order of merit in the Entrance Test from the general pool.

20. Rule 9 deals with the procedure for selection. Clause (d) dealing with the Multipurpose

and P.U.C. candidates, refers to the fact that the total seats available are 545 and that "according to the pattern of distribution, 40% of the seats are reserved for Multipurpose and 40% for P.U.C. (including I.S.C.)". The said clause further provides that the rate of seats to be filled up by the candidates from the P.U.C./Multipurpose and allied qualification holders should be done so as to keep the number of seats according to the ceiling, i.e., 40% as per the pattern of allotment for each group. It is this provision that was really struck down by the High Court.

21. Rule 10 specifies that all reservations could be subject to the order of merit of marks obtained in the Entrance List. The other rules are not material.

22. From the perusal of the rules, referred to above, two aspects underlying the scheme of selection broadly emerge : (1) that there is to be an Entrance Test for all the applicants for the admission to the 1st Year Integrated M.B.B.S. Course; and (2) that the result of the Entrance Test is to form the basis for admission to the medical course. Under Rule 3(2) candidates possessing the minimum qualification of H.S.C. (M.P.), I.S.C., P.U.C. and A.I.H.S.C. or equivalent qualification are eligible to appear in the Entrance Test. Therefore, it is clear that all the candidates possessing these qualifications are to be put on a par and are qualified to take the Entrance Test.

23. We have already referred to the fact that there is a proviso that the candidates excepting those belonging to the Scheduled Castes and Scheduled Tribes should have obtained in their qualifying examination not less than 50% of marks in Physical and Biological Sciences put together in their qualifying examination. There is no distinction made between a P.U.C. or Multipurpose candidate. Both of them in order to become eligible to appear in the Entrance Test must have secured not less than 50% marks in their qualifying examinations in the two Physical and Biological Sciences put together. The only relaxation, or exception, if it may be so called, is regarding the candidates belonging to the Scheduled Castes and Scheduled Tribes. These candidates should have secured not less than 40% of the marks in those subjects in their qualifying examination.

24. Rule 4 emphasises that all eligible candidates who have applied for admission are bound to take the Entrance Test conducted by the Director of Medical and Health Services. All the candidates, who take the Entrance Test, must take all the four papers, referred to therein. Here again, it will be seen that there is no distinction made between a P.U.C. and a Multipurpose candidate. Both of them must have obtained not less than 50% marks under Rule 3 in Physical and Biological Sciences in their qualifying examinations, and both of them will have to appear for those subjects in the Entrance Test, which is common to all the candidates.

25. Rule 6 specifically provides for the admission being made on the basis of the results of the Entrance Test. Rule 7 regarding distribution of seats specifically refers to 532 seats being available to be filled up on the basis of merit in the Entrance Test. But when we come to Rules 8 and 9, it is stated in the former that 40% each is to be allotted on the basis of qualifying examination to Multipurpose and P.U.C. students and the latter refers to distribution in the same

proportion to the two seats of candidates on the basis of the result of the Entrance Test. This is so, notwithstanding the fact that Rule 10 provides even in respect of candidates for whom reservations have been made, their selection will be in the order of merit of marks obtained in the Entrance Test. When the scheme of the rules clearly shows that the basis of selection for the 1st Year Integrated M.B.B.S. Course is according to the result of the Entrance Test, the question is whether the reservation of 40% of seats for the H.S.C. candidates under Rule 9 is valid ? Under this rule though a P.U.C. candidate may have got higher marks than a H.S.C. candidate, he may not be able to get admission because 40% of the seats allotted to the P.U.C. candidates would have been filled up; whereas a H.S.C. candidate who may have got lesser number of marks than a P.U.C. Candidate may be eligible to get a seat because of 40% quota allotted H.S.C. candidates has not yet been completed. Does this amount to an arbitrary discrimination violative of Article 14 ? Prima facie having due regard to the scheme of the rules and the object sought to be achieved, namely, of getting the best students for the Medical Colleges, the provision is discriminatory and it has no reasonable relation to the object sought to be achieved.

26. Mr. Gupte, learned counsel for the State urged that P.U.C. and H.S.C. candidates form two separate categories and that unless such reservation of seats is made, the H.S.C. candidates may not be able to get adequate number of seats in the Medical Colleges. He further contended that the Medical Colleges being run by the Government, it is open to the State to specify the sources from which the candidates will have to be selected for admission to those Colleges. He also pointed out that such a categorisation of students into two separate groups as P.U.C. and H.S.C. has been held to be valid by the High Court.

27. Mr. Tarkunde, learned counsel for the respondents, on the other hand, urged that whatever may have been the circumstances that originally existed when the High Court then upheld the division into separate groups of P.U.C. and H.S.C. students, when once the rules clearly specify that there is to be a common Entrance Test and that selections are to be made only on the basis of the results of such a test, the reservation of 40% in favour of the H.S.C. candidates is arbitrary, unjust and discriminatory and as such it violates Article 14 of the Constitution.

28. We are in agreement with the contention of Mr. Tarkunde regarding this aspect and, in our opinion, the High Court was justified in striking down the provision regarding reservation of 40% of seats to the H.S.C. candidates under Rule 9. We have already indicated the scheme of the rules as well as the basis for selection, as could be gathered from those rules.

29. We will now briefly advert to the decisions referred to by the learned counsel on both sides. Mr. Gupte drew our attention to the following decision.

30. In Gullapalli Nageswara Rao and Others v. Principal, Medical College, Guntur and Others, [AIR 1962 AP 212] the High Court had considered the provision made in a rule by the Government regarding reservation of 1/3rd of total number of seats in favour of Multipurpose candidates in the Pre-professional Course in medicine. The rule, no doubt, provided that admission for the said course should be both from category of Multipurpose and P.U.C. students

on the basis of merit. Nevertheless a reservation of 1/3rd of the total number to be admitted was made in favour H.S.C. This reservation was attacked as being arbitrary and unjust. On behalf of the State it was urged that the said reservation is not hit by Article 14 as it was necessary to afford equal opportunities to Multipurpose candidates. The High Court considered in this connection the syllabus for study prescribed for the P.U.C. and H.S.C. candidates in their respective courses. The High Court held that the Multipurpose candidates have to study more subjects than the P.U.C. candidates and that their examination also covers a course extending over a period of four years. In this view the High Court held that the H.S.C. candidates are at a disadvantage in the matter of securing higher percentage of marks in their optional subjects, whereas a P.U.C. candidate had a distinct advantage over them. It was further held that in such a situation there are possibilities of P.U.C. candidates securing higher percentage of marks in their optional subjects than the Multipurpose candidates and securing on the basis of the result of their qualifying examination a larger number of seats in the Pre-professional Course in medicine. Ultimately, the reservation of 1/3rd number of seats in favour of the H.S.C. candidates was upheld by the High Court.

31. It must be noted that at the time when the High Court dealt with the matter, there was no uniform Entrance Test to be taken by both the P.U.C. and the H.S.C. candidates as is the position at present. On the other hand, the selection to the Pre-Professional Course in medicine was then made on the basis of the marks obtained in the optional subjects by the respective students in their previous course of study. The above decision, in our opinion, has no application to the facts of the present case. The fact that the High Court approved of reservation in the circumstances then existing will not help the State in the case before us.

32. The next decision to which our attention was drawn by Mr. Gupte is P. Sagar and Others v. State of Andhra Pradesh, represented by Health Department, Hyderabad and Others. [AIR 1968 AP 175]. To this decision we will have to revert when we deal with the validity of reservation made for the Backward Classes under G.O. No. 1793 of 1970. But so far as the question of reservation for the P.U.C. and H.S.C. students is concerned, it is seen that certain rules provided for reservation of percentage of seats for the candidates belonging to the H.S.C. and P.U.C. Here again the rule was that 1/3rd of the total number of seats in all categories put together should be given to the H.S.C., Multipurpose and I.S.C. candidates and that at least 50% of the seats should be given to the P.U.C. candidates. It appears that the reservation of 50% of seats for P.U.C. candidates was challenged as being unjust. It was urged before the High Court that the H.S.C. (Multipurpose) examination is very difficult and as such those candidates will not be able to secure higher marks as compared to the P.U.C. candidates and in support of this contention the earlier decision in Gullapalli Nageswara Rao and Others v. Principal, Medical College, Guntur and Others (supra), was relied on. But we find that during the course of the hearing the Advocate-General intimated the High Court that the Government was aware that the reservation of 50% seats to the P.U.C. candidates was working a hardship on the Multipurpose candidates and that the rules were being amended. It was later on represented that rules had also been amended. Therefore, the High Court ultimately held that in view of the amendment to the

rules, it was not necessary to consider the challenge with respect to the reservations made for the Multipurpose and the P.U.C. candidates. Here again, it is to be stated that there was no common Entrance Test for all the candidates belonging to the P.U.C. and H.S.C. categories. On the other hand, the selections were made on the basis of the marks obtained by them in their qualifying examinations. It was further held in the said decision that even on the basis that the qualifying examinations taken by the P.U.C. and H.S.C. candidates were equal, still the reservation is not invalid as discriminatory under Article 14 of the Constitution. But here again it is to be noted that selections were made on the basis of the marks obtained in the qualifying examinations and not on the basis of marks obtained in a common Entrance Test held for all the candidates uniformly. This decision is also, more or less similar to the one in Gullapalli Nageswara Rao and Others v. Principal, Medical College, Guntur and Others (supra).

33. The decision in P. Sagar and Others v. State of Andhra Pradesh (supra), had also to deal with the reservation of seats made in the Professional Colleges for the Backward Clauses on the basis of the G.O. which was then in force. It was held that the said reservation was not saved by Article 15(4). The decision of the High Court striking down the reservation for the Backward Classes alone was challenged by the State in this Court in State of Andhra Pradesh and Another v. P. Sagar. [(1968) 3 SCR 595 : AIR 1968 SC 1379 : (1968) 2 SCJ 778]. This Court upheld the decision of the High Court.

34. We will have to refer to the above decisions of the High Court as well as of this Court when we deal with the second aspect which arise for consideration before us regarding the reservation made for the Backward Classes under G.O. No. 1793 of 1970.

35. Mr. Gupte then referred us to the decision in Chitra Ghosh and Another v. Union of India and Others. [(1970) 1 SCR 413 : (1969) 2 SCC 228]. That decision related to a challenge made by certain students who were denied admission to the Maulana Azad Medical College, New Delhi. The said college was established by the Government of India. Of the 125 students, who are to be admitted annually, 15% of the seats are reserved for Scheduled Caste candidates and 5% for candidates belonging to the Scheduled Tribes, 25% of the seats (excluding the seats reserved for Government of India nominees) were reserved for girl students. In particular 23 seats were reserved to certain categories and they were to be filled up by the candidates who were nominated by the Central Government. The categories to which the said nomination had to be so made were as follows-

(1) Sons/daughters of residents of Union Territories specified below including displaced persons registered therein and sponsored by their respective Administration of Territory-

(a) Himachal Pradesh, (b) Tripura, (c) Manipur, (d) Naga Hills, (e) N.E.F.A. and (f) Andaman.

(2) Sons/daughters of Central Government servants posted in Indian Missions abroad.

(3) Cultural Scholars.

(4) Colombo Plan Scholars.

(5) Thailand Scholars.

(6) Jammu and Kashmir State Scholars.

36. The appellants therein had obtained about 62.5% marks and were domiciled in Delhi. According to them they were entitled to admission on the basis of merit and would have been so admitted but for the reservations, which were filled by the nominations made by the Central Governments (sic). It was their further contention that the students who had been so nominated by the Central Government and got admission had obtained less percentage of marks than the appellants. Mainly the power of the Central Government to make the nominations was challenged on the ground that the provision for reservation in favour of such nominees of Central Government was not based on any reasonable classification and suffered from the vice of discrimination and hence the reservation was hit by Article 14, read with clauses (i) and (iv) of Article 15 and clause (ii) of Article 29. This Court rejected the connection and held that neither clauses (i) and (iv) of Article 15 nor clause (ii) of Article 20 was violated. In support of the challenge of discrimination under Article 14, it was claimed by the appellants that merit being the sole criteria for admission, the provisions made for reservation for candidates to be nominated by the Central Government, introduced discrimination, as it had no reasonable nexus to the object sought to be achieved. After a reference to the provisions made in respect of each of the categories to be nominated by the Central Government on merits, it was held that the classification in all those cases was based on intelligible differentia, which distinguished them from the group to which the appellants belonged. In Particular, Mr. Gupte relied on the following observations in the said decision :

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter-alia on all overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis, it is not for the courts to interfere with the manner and method of making the classification.

The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In Minor P. Rajendran v. State of Madras, [(1968) 2 SCR 786 : AIR 1968 SC 1012 : (1968) 2

SCJ 801] it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose."

37. Based upon these observations, Mr. Gupte contended that the sources for selecting candidates as well as the reservation made in respect of admission to the Maulana Azad Medical College have both been approved by this Court as valid and not violative of Article 14. On this analogy, the counsel urged, the present classification of P.U.C. and H.S.C. into two categories and the reservation of 40% for H.S.C. candidates are valid. In our opinion, the above decision does not lead to the result contended on behalf of the State. The Special circumstances and the reasons for making the reservation to enable the Central Government to make nominations so that candidates belonging to those categories can get adequate representation by way of admission in the Medical Colleges have been elaborately adverted to by this Court and it is on that basis that this Court accepted the classification as valid. It was further held that the said classification has got a rational relation to the object sought to be achieved. The object was stated to be to impart medical education to the candidates belonging to those groups or area where adequate facilities for imparting such education were not available. But the point to be noted in the said decision is that in respect of other candidates, who are not governed by any reservation, the selection was on the basis of merit, namely, the marks obtained by them. On the other hand, in the case before us, though a uniform Entrance Test has been prescribed for both the P.U.C. and H.S.C. candidates, still the selection is not made on the basis of the marks obtained in the Entrance Test. On the other hand, the selections are made after disregarding those marks. At any rate, so far as some P.U.C. candidates are concerned it shows a preference to the H.S.C. candidates, who may have got lesser number of marks and would not have got admission, but for the reservation of 40% made for the group to which they belonged. It is no doubt true that it is open to the State to prescribed the sources from which candidates will be selected and also prescribe the criteria for eligibility. In fact, in the case before us, as we have already pointed out, the rules provide for the qualifications which have to be satisfied to enable a candidate to apply and the sources from which selections will have to be made, have also been prescribed.

38. We have also pointed out that in respect of eligibility for applying for admission to the 1st Year Integrated M.B.B.S. Course, no distinction has been drawn between P.U.C. and H.S.C. candidates, both of whom have to get at least 50% marks in Physical and Biological Sciences. So that clearly shows that they have been put on a par so far as eligibility is concerned. But the discrimination is made only after the Entrance Test is over by denying admission to the P.U.C. candidates who may have got higher marks than some of the H.S.C. candidates who get admission because of the 40% reservation.

39. Mr. Gupte then referred us to the decision in Ganga Ram and Others v. The Union of

India and Others, [AIR 1970 SC 2178 : (1970) 1 SCC 377 : (1970) 3 SCR 481] wherein the classification of direct recruits and promotees into two different categories in the Accounts Department of the Railway Establishment was held to be a reasonable classification not attracting the vice of Article 14 or 16. In that case this Court was considering a claim for promotion based upon the test of Seniority-cum-suitability. After considering the background of the service concerned, it was held that the State which encounters diverse problems arising from a variety of circumstances is entitled to lay down the conditions of efficiency and other qualifications for securing best service for being eligible for promotion in its different departments. It was emphasised that the object sought to be achieved by the relevant provisions which were under attack was the requisite efficiency in the Accounts Department of the Railway Establishment. It was in that connection held that the direct recruits and promotees constitute different classes or categories and such a classification is sustainable on intelligible differentia, which has a reasonable connection with the object of efficiency in the department.

40. This decision also does not help the appellants as there was no distinction made inter se between the promotees and the direct recruits. On the other hand, the same criteria was adopted for purposes of promotion to the persons forming the class of direct recruits. Similarly, the same test was applied to the persons coming under the group of promotees. It was under such circumstances that this Court held the classification to be valid, and the situation which this Court had to consider in that connection was entirely different, from the one before us where all the candidates belonging to both the P.U.C. and H.S.C. merge under the rules when they take the Entrance Test.

41. In D. N. Chanchala, etc. v. The State of Mysore and Others, [AIR 1971 SC 1762 : (1971) 2 SCC 293] one of the questions this Court had to consider was the validity of the university-wise distribution of seats in the medical colleges run by the State of Mysore. There were three Universities in Mysore State, namely, Karnatak, Mysore and Bangalore Universities. The challenge to such distribution of seats was that candidates having lesser marks might obtain admission at the cost of another having higher marks from another university. This Court after a reference to the different standards of examinations held in three universities, rejected the challenge of discrimination as follows :

"Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged..... In our view the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their

training in technical studies, such as medical studies. In our opinion, the rules cannot justify be attracked on the ground of hostile discrimination or as being otherwise in breach of Article 14."

42. It will be seen that the above decision has emphasised that the selection which was made on the basis of the marks obtained in the qualifying examination held by each of the universities was valid and the distribution of seats in the medical colleges university-wise was also valid in view of the different standards adopted by each university. Again it is to be noted in the said decision, there was no question of all the students of the three universities taking a common Entrance Test on the basis of which a selection was made. This decision also does not help the appellants.

43. The decision in The State of Maharashtra and Another v. Lok Shikshan Sansatha and Others, [(1971) 2 SCC 410] which has laid down that in the matter of permitting colleges to be started in particular areas having due regard to the need of the area concerned, is essentially a matter of policy for the State which has to take a decision on overall assessment and summary of the requirements of a particular area, so long as the decision is not arbitrary or mala fide, it was further held that the courts will not interfere with the assessment made by the State in pursuance of its policy. This decision in also of no avail to the appellants.

44. Mr Tarkunde, apart from distinguishing the above decisions, for the reasons mentioned by us earlier, pointed out that in Gullapalli Nageswara Rao and Others v. Principal, Medical College, Guntur and Others (supra), the basis of classification of P.U.C. and H.S.C. was not challenged as there was no necessity for those students to take a common test as in the case before us. He referred us to the averments in the counter-affidavit filed by the Assistant Secretary to the Government in Writ Petition No. 3859 of 1970 in which conducting of Entrance Test was then challenged. The Assistant Secretary in paragraph 9 of the said counter-affidavit in respect of holding of the Entrance Test, has stated that the selection of candidates for the Ist Year Integrated M.B.B.S. Course is made on the basis of marks obtained at the Entrance Examination, as such a method of selection ensures fair play and affords equal opportunity to all candidates. He has again referred us to the fact that by introducing the method of selection by the Entrance Test the Government had done away with the reservations originally made for the P.U.C. and H.S.C. candidates and thus has offered equal opportunity to all candidates. He has further stated that both the P.U.C. and the H.S.C. students apart from having obtained not less than 50% of marks in Physical and Biological Sciences to be eligible to apply for admission to the medical colleges, have also taken the Entrance Test in the subjects mentioned in the rules. According to the State, the result of the Entrance Test is a method of making selection to the medical colleges, thus ensuring fair play and justice.

45. In the same Writ Petition the Additional Director of Medical and Health Services (Professional Education) has referred to the necessity of holding an Entrance Test. In this connection he refers to the marks obtained by certain P.U.C. and H.S.C. students in their qualifying examinations and also to their marks in the Entrance Test. The Officer has stated that the marks obtained by the candidates in the qualifying examinations are not a reliable guide to

assess the merits as the marks obtained by those candidates in the Entrance Test were very poor. Therefore, it has been emphasised that the marks obtained in the Entrance Test is the guiding factor to assess the merits of both the sets of candidates for admission to the Medical College.

46. We have referred to the averments contained in the counter-affidavit of the two officers above as they form part of the present record and they have also been relied on for one purpose or other by both the State and the respondents. The above averments clearly establish that even according to the State the marks obtained in the Entrance Test, according to the rules, is the decisive test for the purpose of considering the merits of the candidates, who seek admission to the Medical College. These averments clearly show that there is absolutely no justification for making of special reservation of 40% in favour of H.S.C. candidates, when once a common Entrance Test is held for all the candidates and selection is made on an assessment of merit of marks obtained at the said examination.

47. Mr. Tarkunde referred us to Minor P. Rajendran v. State of Madras and Others (supra), where the validity of the scheme of districtwise distribution of seats as per the rules framed by the State of Madras, to the Medical Colleges, was challenged as violative of Article 14. The State attempted to justify the said method of districtwise distribution on the ground that if districtwise distribution is not made, the candidate from Madras City would have an advantage and would secure the largest number of seats in the Medical College, which will not be justified on the basis of the proportion of population of the Madras City. The challenge based on discrimination under Article 14 was accepted by this Court and it was held that the allocation of seats districtwise results in discrimination and there is no nexus between the districtwise distribution and the object to be achieved, namely, admission of the best talent from the sources indicated in the rules. On this ground, the allocation of seats on districtwise basis was struck down as violative of Article 14.

48. Similarly unitwise distribution of seats in the Medical Colleges in Tamil Nadu was declared by this Court in Minor A. Periakaruppan and Another v. State of Tamil Nadu and Others, [AIR 1971 SC 2303 : (1971) 1 SCC 38 : (1971) 2 SCJ 222] as violative of Articles 14 and 15.

49. These two decisions clearly establish that a classification which has no rational basis and has no relation to the object sought to be achieved is violative of Article 14.

50. It is not necessary for us to refer to the various decisions laying down the contents of Article 14. Suffice it to say that it does not forbid reasonable classification. In order to pass the test of permissible classification, two conditions must be fulfilled : (1) The classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those left out of the group, and (2) the differentia must have a rational relation to the object sought to be achieved.

51. It is no doubt open to the State to prescribe the sources from which the candidates are

declared eligible for applying for admission to the Medical Colleges; but when once a common Entrance Test has been prescribed for all the candidates on the basis of which selection is to be made, the rule providing further that 40% of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. The reservation of 40% to the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence we agree with the High Court when it struck down this reservation under Rule 9 contained in G.O. No. 1648 of 1970 as violative of Article 14.

52. The next question that arises for consideration is the correctness of the order of the High Court striking down the reservation of seats made for Backward Classes in the Professional Colleges under G.O. No. 1793 of 1970. The said reservation has been struck down on the ground that it violates Article 15(1) and falls outside Article 15(4) of the Constitution.

53. The view of the High Court is very strenuously challenged by Mr. S. V. Gupte, learned counsel for the appellants. Mr. V. M. Tarkunde, learned counsel for the respondents, supported the various reasons given by the High Court for striking down the said reservation.

54. Before we deal with the reasons given by the High Court for striking down the reservation made for the Backward Classes under the said G.O., we will refer to the circumstances under which the Backward Classes Commission was appointed and whose report has formed the basis for providing the reservation for the various persons mentioned therein.

55. The State of Andhra was formed on October 1, 1953, and the Andhra Pradesh State came into existence with effect from November 1, 1956. The State of Andhra originally formed part of the Composite Madras State. The Composite Madras State had maintained a list of Backward Classes (other than the Scheduled Castes and Scheduled Tribes) in that State and had made special provisions with regard to admission to educational institutions, reservation of posts in Government Service, grant of scholarships and other concessions to assist those Backward Classes. After the formation of the Andhra State on October 1, 1953, the list maintained by the Composite Madras State was continued in the Andhra area with some modifications. The former Princely State of Hyderabad was also maintaining a list of Backward Classes in that State, and this was also continued after the formation of Andhra Pradesh, which included Telangana area. Thus with effect from November 1, 1956, there were two lists of Backward Classes in the State of Andhra Pradesh- one for Andhra area and the other for Telangana area. Both the lists together comprised about 146 communities- 86 and 60 in the Andhra and Telangana areas respectively.

56. The President of India appointed in January, 1953, a Backward Classes Commission under Article 341 of the Constitution headed by Sri Kaka Kalelkar, to determine the criteria to be adopted for treating any section of the people, other than Scheduled Castes and Scheduled Tribes, as socially and educationally Backward Classes. The said Commission was also to draw up a list

of such Classes on the basis of the criteria laid down by it. The report of this Commission was considered by the Central Government, which issued a memorandum pointing out that some of the tests applied by the Commission were very vague. It was further pointed out that if those tests were applied, a large majority of the Country's population will have to be considered backward. The Central Government decided to undertake further investigation to draw some positive and workable criteria for this purpose. The State Governments were desired in the meanwhile to render every assistance possible to those persons who, in the opinion of the State Governments were backward. Further attempts by the Central Government to draw up a list of Backward Classes on an All India basis did not meet with much of a success. Even here some State Governments were in favour of adopting economic backwardness as a criteria while others were inclined to stick on to the list prepared by them on the basis of caste. The Central Government conveyed to the State Governments on August 14, 1961, expressing its view that while the State Governments have the discretion to choose their own criteria for defining backwardness, it would be better to apply economic tests rather than classifying people by their castes.

57. The State of Andhra Pradesh issued G.O. No. 1886, dated June 21, 1963, specifying a list of certain persons as belonging to Backward Classes. The list was prepared for the purpose of selecting candidates to the seats reserved for backward communities in the Medical Colleges in Andhra Pradesh. Under the said G.O., 25% of the seats were reserved for Backward Classes in accordance with the list contained therein. The reservation for the Backward Classes was challenged before the Andhra Pradesh High Court by certain applicants on the ground that the Government Order offends Article 15 and 29(2) of the Constitution. It was alleged that the State Government acting in fraud of its powers listed more than 139 castes as socially and educationally backward. It was the further allegation that the list had been prepared exclusively on the basis of caste.

58. The State Government contested the writ petitions on the ground that the Government was maintaining a list of Backward Classes based on socially and educationally backwardness of the caste and to such people 25% of the seats had been reserved. It was further averred that such reservation had been going on for a long time and the list was also being suitably revised by making additions or deletions whenever found necessary.

59. A learned Single Judge of the High Court in Sukhdev v. The Government of Andhra Pradesh, [1966 An WR 294] considered the validity of the impugned G.O. No. 1886 of 1963 from two points of view : (1) whether the list of backward classes was based solely on consideration of caste; and (2) whether the Government had adopted any standard or method of determining the social and educational backwardness of the classes specified and, if so, the material upon which the Government has so acted. The High Court held that the State on which lay the onus of supporting the classification as valid had placed no materials before the Court as to the economic conditions of the various classes, their occupation and habitation and social status and their educational backwardness. The High Court is also of the view that the enumeration of persons as backward Classes in the Government Order has been made almost exclusively on the

basis of caste. On these grounds the Government Order was struck down as violative of Articles 5(1) and 29(2) as being in fraud of powers conferred on the State.

60. After the G.O. No. 1886 of 1963 was struck down by the High Court, the State Government decided that the criteria for determining backwardness should be only economic factor and should be applied to individual family rather than to a whole caste. The Government issued a G.O. No. 301/Education, dated February 3, 1964 scrapping the then existing list of Backward Classes with effect from April 1, 1964, and directed that financial assistance be given to the economically poorer sections of the population, whose family income was below Rs. 1,500/- per annum. The State Government again took up the question of drawing up a list of Backward Classes in consonance with the provisions of the Constitution. For this purpose a Cabinet Sub-Committee was constituted to draw up a list of persons who could be considered backward. The Cabinet Sub-Committee obtained information from other States and as per the advice of its Law Secretary, it was decided that certain criteria is to be adopted for determining the backwardness of the people. The criteria included poverty, Low standard of education, Low standing of living, Place of habitation; Inferiority of occupation and caste. The Cabinet Sub-Committee having taken a decision regarding the criteria to be applied, directed the State Director of Social Welfare to check up the lists of Backward Classes which had been scrapped on February 3, 1964, and to select from those lists the castes or communities which could be considered backward on the basis of the above criteria. The Director of Social Welfare, in consultation with the Law Secretary drew up a list of persons who could be included in the list of Backward Classes. The said Cabinet Sub-Committee considered the recommendations made by the Director of Social Welfare and accordingly drew up a list of 112 communities which were considered as backward. Accordingly, G.O. No. 1880/Education, dated July 29, 1966, was issued with a list showing 112 communities as backward as being eligible for scholarships and reservation of seats to Professional Colleges and Government Services.

61. The validity of the above Government Order was again challenged before the High Court of Andhra Pradesh on the ground that the list was prepared solely on the basis of caste and violated the provisions of the Constitution. Here again the students who filed the writ petitions in the High Court urged that there was no material difference between the list drawn up under this G.O. and the list which was struck down by the High Court as per G.O. No. 1886 of 1963. The attack was that the list of 1966 was also prepared exclusively on the basis of caste. The State attempted to justify the preparation of the list of Backward Classes as having been properly done after investigation by the Director of Social Welfare in consultation with the Law Secretary. The State further urged that all relevant factors had been taken into account by the Director of Social Welfare before preparing the list.

62. The Division Bench of the Andhra Pradesh High Court in its decision in P. Sagar and Others v. State of Andhra Pradesh (supra), upheld the challenge levelled against the reservation made in the G.O. for Backward Classes on the ground that the State has not placed materials which were available before the Cabinet Sub-Committee or the Council of Ministers. The High

Court is of the view that the list has been drawn up by the Director of Social Welfare and the Law Secretary, who cannot be considered in any sense to be experts and that they had made no investigation; nor collected material data for classifying the persons mentioned in the G.O. as Backward. It was further, emphasised that neither the Director of Social Welfare nor the Cabinet Sub-Committee had before them the population of the various classes, their economic conditions, percentage of literacy or their social and economic status. It is the view of the High Court that no substantial change had been made from the list prepared under G.O. No 1886 of 1963 and which had already been struck down by the High Court. Ultimately, the High Court held that the preparation of the list of Backward Classes under G.O. No. 1880 of 1966 had been made without any material and as such the list was struck down as not being saved by Article 15(4).

63. We have referred rather elaborately to the list prepared by the State Government under Government Orders Nos. 1886 of 1963 and 1880 of 1966 as well as the decisions of the High Court striking down those lists. Even at the time when the earlier decision was given by the Andhra Pradesh High Court in P. Sukhadev v. The Government of Andhra Pradesh (supra), the decision of this Court in M. R. Balaji and others v. State of Mysore, [1963 Supp 1 SCR 439 : AIR 1963 SC 649] had been pronounced. It is really on the basis of the said decision, that the High Court, on the former two occasions struck down the reservations made under the two Government Orders on the ground that the preparation of the two lists of Backward Classes had not been made in accordance with the principles laid down by this Court. In fact, in both the decisions the High Court has emphasised that there has been no investigation whatsoever regarding the various factors that are necessary to be obtained as laid down by this Court for the purpose of making special provisions for the advancement of any socially and educationally Backward Classes of citizens as envisaged in Article 15(4). The sole reason given in the two decisions by the High Court for striking down the reservation is the fact that the necessary data or material, as laid down by this Court, had not been collected by the State Government. We are again emphasising this aspect because the High Court in the decision, which is under attack before us, has relied on the above two earlier decisions, to a large extent for coming to the conclusion that the present list of Backward Classes suffers from the same infirmity, as pointed out on the former occasion. The High Court has further held that the same persons who had been included in the original list, as belonging to Backward Classes and which list was struck down twice, have again been included in the present G.O. No. 1793 of 1970. In the course of the judgment, we will be pointing out that the High Court has committed a basic error in proceeding on the basis that the present list suffers from the same vice, pointed out in the earlier decisions by the High Court.

64. The State of Andhra Pradesh challenged before this Court the decision of the High Court striking down the reservations made for Backward Classes as well as the preparation of list under G.O. No. 1880 of 1966. This Court in State of Andhra Pradesh and Another v. P. Sagar (supra), upheld the decision of the High Court striking down the reservation. This Court agreed with the view of the High Court that no enquiry or investigation had been made by the State Government before preparing the list of Backward Classes enumerated in the said Government Order. It was further held that the State had placed no materials before the Court, on the basis of which the list

of Backward Classes was prepared, excepting relying on the fact that it was prepared by the Director of Social Welfare with the assistance of the Law Secretary. It is to be noted that this Court upheld the decision of the Andhra Pradesh High Court in view of the fact that the State had made no investigation or enquiry, nor had it collected the necessary materials to ascertain the socially and educationally backwardness of the persons mentioned in the list. The decision of this Court was rendered on March 27, 1968.

65. On April 12, 1968, the State Government by G.O. No. 870, appointed a Commission to determine the criteria to be adopted in considering whether any sections of the citizens of India in the State of Andhra Pradesh are to be treated as socially and educationally Backward Classes. The Commission was also desired to prepare a list of such Backward Classes in accordance with the criteria to be adopted. The Commission consisted of nine members, presided over by the retired Chief Justice of the Andhra Pradesh High Court. The other members of the Commission included the members of the State Legislature. The terms of reference have been printed as Appendix I in the report submitted by the Backwards Classes Commission. A perusal of the terms of reference shows that the Commission was desired to investigate and determine the various matters regarding the preparation of list of Backward Classes for providing a reservation in educational institutions and also for appointments for posts in Government service. The Commission was authorised to obtain any information that it considered necessary from the Government Departments, Collectors, Organisations. Individuals and from such other persons as it considered necessary. It was also authorised to visit any part of the State for the purpose of investigation and enquiry. Later on, it is seen that the retired Chief Justice of the High Court, who was originally the Chairman of the Commission, resigned and the Commission was headed by a retired I.C.S. Officer. The terms of reference were as follows :

"The Commission shall-

(i) determine the criteria to be adopted in considering whether any sections of citizens of India in the State of Andhra Pradesh (other than the Scheduled Castes and Scheduled Tribes specified by notifications issued by the President of India under Articles 341 and 342 of the Constitution of India) may be treated as socially and educationally Backward Classes and in accordance with such criteria prepare a list of such backward classes setting out also their approximate numbers and their territorial distribution;

(ii) investigate the conditions of all such socially and educationally Backward Classes and the difficulties under which they labour; and make a recommendations as to the special provisions which may be made by the Government for their advancement and for promotion of their educational and economic "interests, generally and with particular reference to-

(1) the reservation in educational institutions maintained by the State or receiving aid out of State funds;

(2) the concessions, such as scholarships, which may be given by way of assistance;

(3) the percentage or proportion of such reservation, the quantum of such assistance and the period during which such reservation or assistance may be made or given; and

(iii) advise the Government as to the Backward Classes of citizens (other than the Scheduled Castes and the Scheduled Tribes) which are not adequately represented in the services under the State and prepare a list of all such Backward Classes and make recommendation as to-

(1) the reservation of appointments or posts in favour of such Backward Classes, and

(2) the percentage or proportion of such reservation and the period during the which such reservation may be made.

66. The Commission submitted its report to the Government on June 20, 1970. The report was placed before the State Legislature as also the Andhra Pradesh Regional Committee. The Commission in its report had drawn up a list of 92 classes, which according to it, are socially and educationally backward and have to be classified as backward Classes and for whom reservation have to be made.

67. After having regard to the views expressed by the Legislature as well as the Regional Committee and after an examination of the report, the Government issued G.O. No. 1793 of 1970. The Government accepted the criteria adopted by the Commission for determining the social and educational backwardness of the citizens, namely, (i) the general poverty of the class or community as a whole; (ii) occupations pursued by the classes of citizens, the nature of which must be inferior or unclean or undignified and unremunerative or one which does not carry influence or power; (iii) Caste in relation to Hindus; and (iv) Educational backwardness.

68. The Government also accepted the list drawn up by the Commission in toto and declared that the castes and communities specified in the annexure to the G.O. are socially and educationally Backward Classes for the purpose of Article 15(4) of the Constitution. Though the Commission had recommended reservation of 30% of seats for the Backward Classes in the Professional Colleges, the Government in the order decided that only 25% of seats in the Professional Colleges should be reserved for Backward Classes. The Government also agreed to the recommendations of the Commission to the classification of the Backward Classes into four groups and directed that on the basis of the population of those four groups, the 25% reservation of seats in the Professional Colleges was to be apportioned amongst the said four groups in the proportion mentioned in the Government order. The Government made it clear that the acceptance of the recommendations of the Commission regarding reservations shall be in force for a period of ten years in the first instance and the position will be reviewed thereafter.

69. We have referred to the circumstances leading up to the passing of the impugned G.O. No. 1793 of 1970. In order to appreciate the criticism made by the High Court regarding the approach made by the Commission, it is necessary to refer to the salient features of the report of the Backward Classes Commission. The report of the Backward Classes Commission is Annexure

B before us. As soon as the commission was appointed, the Commission issued a questionnaire and circulated it very widely to the various authorities and organisations mentioned in its report. The questionnaire refers to various matters regarding the criteria to be adopted for ascertaining the backwardness of persons as well as the information on matters relating to the social and educational backwardness of the persons. Apart from the distribution of the questionnaire, the Commission called for information from the Heads of all Government Departments regarding the number of persons belonging to each class or community employed in their Departments. Information was also asked from the Principals of Colleges, including the Professional and Technical Colleges regarding the number of students belonging to each class or community in the academic year 1967-68. Similarly, the Head Masters of all the High Schools and Multipurpose High Schools in the State were also requested to furnish information regarding the total number of students belonging to each community who studied in those schools during the last ten years as well as the number of students classwise and communitywise who studied in Classes VI to XI in 1968-69.

70. The Commission toured all the districts in the State and recorded oral evidence on oath from the representatives of a number of communities. During the tour of the districts, the Commission visited the houses and huts belonging to different communities of the people and also made oral enquiries from the inmates about their conditions of living, their customs, relations with other communities and their problems. The names of places visited by the Commission together with the dates of such visits are given in Appendix IV of its Report. The Commission also visited the neighbouring States of Madras, Mysore and Kerala with a view to have discussion with the officers of those Governments, which were connected with the welfare of Backward Classes. The report says that about 820 persons were examined at various places and that about 480 persons submitted written memoranda. A large number of replies were received from the public to the questionnaire issued by the Commission. The Commission has stated that it had an opportunity, during its tour and visit of the villages, of studying the living conditions and standard of life of the various communities. The Commission has, no doubt, referred to the fact that up-to-date statistical information with regard to population of the several communities as well as the percentage of literacy was not available. The difficulty was enhanced by the fact that no castewise statistic had been collected after 1931 census. So far as Andhra area is concerned, the figures of 1921 census were available, as it had been prepared on castewise basis. Regarding Telangana area, the 1931 census of castewise statistic was available. It had to estimate the 1968 population in the two areas on the basis of the respective census datas available. The population figures for 1968 for each caste was fixed by the Commission by the percentage of the increase of the total population. The estimate so made by the Commission is given in Appendix V of the report.

71. Regarding literacy, the Commission adopted the percentage of student population per thousand of particular class or community in standards X and XI with reference to the average student population in the whole State. The reasons for adopting this procedure have been given in Chapter VI. Though information was called for regarding the student population communitywise in standards X and XI from about 2,224 High Schools and Higher Secondary Schools in the

State, only about 50% of the institutions sent the information regarding the student population communitywise, in those two classes. The Commission worked out an average on the basis of the replies received from the 50% of the institutions which itself comes to nearly more than 1,100 Schools. It is not necessary to refer to the employment statistics collected by the Commission. The Commission itself has indicated the difficult problems it had to tackle.

72. Chapters IV and V deal with the constitutional provisions regarding the Backward Class as well as the general principles laid down by the High Court and this Court for ascertainment of their social and educational backwardness.

73. Chapter VI deals with the tests of criteria adopted by the Commission for ascertaining the social and educational backwardness of persons. Regarding social backwardness, after a very exhaustive survey of the trade or occupations carried on by the persons concerned and other allied matters, the Commission has indicated that only such persons belonging to a caste or community who have traditionally followed unclean and undignified occupation, can be grouped under the classification of Backward Classes. In this connection the Commission has adverted to the general poverty of the class or community as a whole, the occupation pursued by the class of citizens, the nature of which is considered inferior and unclean, undignified or unremunerative or one which does not carry influence or power, and caste in relation to Hindus.

74. Regarding educational backwardness, the Commission has adverted to the fact that during the past ten years, the State has introduced many measures for the general educational advancement of its people by introducing compulsory primary education for children and free education for boys up to VIII class and for girls up to XII class. It has taken note of the fact that in 1968-69, free education for boys was also extended up to High School stage. Having regard to the fact that because of literacy and educational advancement, passing in the School Final Class (XI Class) is taken as the minimum qualification for appointment in Public Service as also for admission to University and Technical Education, the Commission is of the view that it is proper to take the last two classes, namely, Classes X and XI as standard for ascertaining the educational backwardness. In this connection it had referred to the report of the Backward Classes Committee, appointed by the Jammu and Kashmir Government, presided over by Dr. P. B. Gajendragadkar, former Chief Justice of India. This Committee has expressed the view that the number of students on the rolls of IX and X classes should be ascertained for determining educational backwardness. The reasons given by the said Committee for this view are quoted by the Commission in its report. The Commission then has adverted to the fact that the average student population in classes X and XI in the State works out to about 4.55 per thousand. On this basis, it has proceeded to apply the principle that communities whose student population in these standards is well below the State average, have to be considered as educationally backward. Here again commission has referred to the fact that as only 50% of the schools had furnished figures with reference to the student population, it had to work out an average based on those figures applicable to the entire State. Though the figures received from the Schools show that certain groups showed a slightly higher level of education, the Commission felt in the light of their having

personally seen their living conditions, the percentage supplied by the schools may not be accurate. In view of this, the Commission has held even those persons as really backward from the educational point of view.

75. Chapter VII gives the list of socially and educationally Backward Classes and there is a very exhaustive note attached to each of these groups as to why the Commission regards them as socially and educationally backward. In that Chapter the Commission has also exhaustively dealt with the names of the groups, the sub-divisions in those groups, their traditional occupation and various other matters having a bearing on their social, economic and educational set-up. Appendix VI which enumerates the list of socially and educationally Backward Classes item by item gives a tabular statement containing information about the name of community, its traditional occupation as well as its population in 1968. Appendix VII contains a note about each of the classes enumerated by the Commission as Backward Classes. Appendix VII contains information regarding the principal occupation, approximate family income, percentage of school going students in the particular groups and various other information regarding the persons mentioned in the list. A perusal of the Appendix VII (sic) and VII shows that the traditional occupations of the persons enumerated as backward were of a very low order such as beggars, washermen, fishermen, watchmen at burial grounds, etc. The Commission had made certain recommendations regarding reservation in the Government Service and it had also made recommendations regarding other assistance to be given to the Backward Classes. In these appeals it is not necessary to refer to those recommendations. For the purposes of these appeals it is only necessary to state that the observations made by this Court in Triloki Nath Tiku and Another v. State of Jammu and Kashmir and Other, [(1967) 2 SCR 265 : AIR 1967 SC 1283 : (1967) 2 SCJ 187] that the principles laid down in M. R. Balaji and Others v. State of Mysore (supra), will equally apply for consideration on a question arising under Article 16(4).

76. We have fairly elaborately dealt with the manner in which the Backward Classes Commission conducted its enquiries and investigation before submitting the report because that given an idea of the complexity of the problem that it had to face as well as the volume of materials collected by it.

77. The main grounds on which the High Court has held invalid the enumeration of the Backward Classes as well as the reservation made for them are as follows : The Commission has classified the groups as Backward Classes mainly on the basis of caste, which is contrary to the principles laid down by this Court beginning from M. R. Balaji and Others v. State of Mysore (supra). The Commission has not collected the necessary data and particulars for the purpose of ascertaining the social and educational backwardness of the groups. The Commission has committed a very serious error in taking census figures of 1921 and 1931 for the Telangana and Andhra areas respectively and projecting those figures and arriving at a conclusion for enumeration of Backward Classes in 1968. Certain communities whose inclusion in the list of Backward Classes by Government Orders Nos. 1886 and 1880 of 1963 and 1966 respectively and which had been struck down as invalid by the High Court have again been included in the list of

Backward Classes. This, according to the High Court, shows that no proper investigation has been made by the Commission. The Commission committed a mistake in adopting the average of student population per thousand of a particular class or community in the X and XI Classes with reference to the State average for the purpose of determining educational backwardness. The Commission, and the Government through the vast machinery at their command should have collected more particulars on the various criteria which have been laid down by this Court for ascertaining the backwardness of a particular group or class. The Commission has ignored the principle laid down by this Court that the social and educational backwardness of persons classified in the list should be comparable or similar to the Scheduled Castes and Scheduled Tribes. The groups in which the percentage of literacy is well above the State average have been included in the list of Backward Classes. The Commission has further sub-divided the groups into more backward and less backward class.

78. We have thus indicated broadly the reasons given by the High Court for striking down the reservation made for the Backward Classes.

79. Mr. Gupte, learned counsel for the appellants, urged that the High Court has grossly erred in striking down the list of Backward Classes prepared by the Commission as well as the reservation made by the State. Mr. Gupte, at one stage even urged that the view of the High Court that before a group can be included in the list of Backward Classes, its social and educational backwardness must be similar or comparable to that of Scheduled Castes and Scheduled Tribes, is erroneous. According to the learned counsel, there is no warrant for any such assumption on a clear reading of Article 15(4). Counsel further urged that to treat Article 15(4) as an exception is also equally erroneous.

80. We are not inclined to accept these two contentions of Mr. Gupte because the said two principles have been laid down by this Court in M. R. Balaji and Others v. State of Mysore (supra), R. Chitralekha and Another v. State of Mysore and Others, [(1964) 6 SCR 368 : AIR 1964 SC 1823 : (1965) 1 SCA 132] and in State of Andhra Pradesh and Another v. P. Sagar (supra). In all these decisions it has been held that Article 15(4) has to be read as a proviso or exception to Articles 15(1) and 29(2). The said decisions have also laid down that the Backward Classes for whose improvement special provision is contemplated by Article 15(4) must in the matter of their backwardness be comparable to Scheduled Castes and Scheduled Tribes. In fact the attempt of Mr. Gupte was that the principles laid down in the above decisions require reconsideration. It is not necessary for us to consider that aspect in this particular case because as we will be indicating later, factually the classes enumerated as Backward Classes are really socially and educationally backward, on the application of the principles laid down by this Court. It must be pointed out that none of the above decisions lay down that social and educational backwardness must be exactly similar in all respects to that of the Scheduled Castes and Scheduled Tribes. Those decisions also lay down that Article 15(4) being in the nature of an exception, the conditions which justify the departure from Article 15(1) must be strictly shown to exist. Therefore, we have to consider the correctness of the decision of the High Court taking into

consideration also the above principles laid down by this Court. By Article 15 of the Constitution, as originally enacted, it was provided that :

"(1) The State shall not discriminate, against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(3) Nothing in this article shall prevent the State from making any special provisions for women and children."

Article 29(2) provided that :

"No citizen shall be denied admission into any educational institution maintained by the State or receiving out of State funds on grounds only of religion, race, caste, language or any of them."

81. In Article 46, which occurs in Part IV of the Constitution relating to the Directive Principles of State Policy, the State has been enjoined to promote with special care the educational and economic interest of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. Articles 15 and 29, as originally framed, prohibited the making of any discrimination against any citizen on the ground only of religion, race, caste sex, place of birth or any of them. In State of Madras v. Shrimati Champakam Dorairajan, [1951 SCR 525 : AIR 1951 SC 226 : 1951 SCJ 31] this Court had to consider the validity of an order issued by the Government of Madras fixing the number of students for particular communities for selection of candidates for admission to the Engineering and Medical Colleges in the State. The challenge was on the ground that it violated guarantee against discrimination under Article 29(2). This Court held that the Government Order constitutes a violation of the fundamental right guaranteed to the citizens of all by Article 29(2) of the Constitution, notwithstanding the Directive Principles laid down in Part IV of the Constitution. This led to Parliament adding clause (ii) in Article 15 by the Constitution (First Amendment) Act, 1951, Article 15(4) is as follows :

"15(4). Nothing in this 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."

82. This clause contained a special provision for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes Or Scheduled Tribes. The reservation has to be adopted to advance the interest of weaker sections of Society, but in doing so it is necessary also to see that deserving and qualified candidates are not excluded from admission to higher educational institutions. In the determination of a class to be grouped as backward, a test solely based upon caste or community cannot be accepted as valid. But, in our opinion, though Directive Principles contained in Article 46 cannot be enforced by courts, Article 15(4) will have to be given effect to in order to assist the weaker sections of the citizens, as the State has been charged with such a duty. No doubt, we are aware that any provision made under this clause must be within the well defined limits and should not be on the basis of caste alone.

But it should not also be missed that a caste is also of citizens and that a caste as such may be socially and educationally backward. 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 the 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 interest.

83. The question before us is whether the Backward Classes Commission had before it the relevant data and materials for enumerating the persons included in the list as Backward Classes. Various factors or criteria to be adopted for such enumeration have been laid down in several decisions by this Court. In particular there is a very exhaustive discussion on all aspects bearing on this matter in M. R. Balaji and Others v. State of Mysore (supra), regarding the factors to be taken into account for the purpose of ascertaining whether a particular class of persons are socially and educationally backward.

83-A. Though Mr. Tarkunde, learned counsel for the respondents, supported the various reasons given by the High Court for striking down the reservations made for the Backward Classes, we are of the opinion that the criticisms levelled against the report of the Backward Classes Commission by the High Court are not justified. It may be that something more could have been done and some further investigation could have been carried out. But, in our opinion, the question is whether on the materials collected by the Commission and referred to in its report, can it be stated that those materials are not adequate or sufficient to support its conclusion that the persons mentioned in the list as Backward Classes are socially and educationally backward ? We may mention in passing that we have not been able to find any definite averment in the affidavits filed by the writ petitioners that any particular group or class included in the list by the Commission is not really socially and educationally backward. In our opinion, the Commission has taken considerable pains to collect as much relevant material as possible to judge the social and educational backwardness of the persons concerned. When, for instance, it had called for information regarding the student population in classes X and XI from nearly 2,224 institutions, if only 50% of the institutions sent replies, it is not the fault of the Commission for they could not get more particulars. If the Commission has only to go on doing the work of collecting particulars and materials, it will be a never ending matter. In spite of best efforts that any commission may take in collecting materials and datas, its conclusions cannot be always scientifically accurate in such matters. Therefore, the proper approach, in our opinion, should be to see whether the relevant data and materials referred to in the report of the Commission justify its conclusions. In our opinion, there was sufficient material to enable the Commission to be satisfied that the persons included in the list are really socially and educationally backward. No doubt there are few instances where the educational average is slightly above the State average, but that circumstances (sic) by itself is not enough to strike down the entire list. In fact, even there it is seen that when the whole class in which that particular group is included, is considered the average works out to

be less than the State average. Even assuming there are few categories which are little above the State average, in literacy, that is a matter for the State to be taken note of and review the position of such categories of persons and take a suitable decision.

84. We have been referred to various decisions, particularly of this Court where reservations for Backward Classes made by the concerned State have been either accepted as valid or struck down. But it is not necessary for us to refer to those decisions because each case will have to be considered on its own merits, after finding out the nature of the materials collected by a commission or by the State when it enumerated certain persons as forming the Backward Classes. But one thing is clear that if an entire caste, (sic) 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).

85. In M. R. Balaji and Others v. State of Mysore (supra), it was held that caste in relation to Hindus may be a relevant factor to consider in determining social backwardness of a group of class of citizens; but it cannot be made the sole or dominant basis in that behalf. In the said decision enumeration of persons a Backward Classes on the basis solely of caste was struck down.

86. In State of Andhra Pradesh and Another v. P. Sagar (supra), a similar list prepared by the State of Andhra Pradesh solely on the basis was struck down. In Triloki Nath and Another v. State of Jammu and Kashmir and Others, [(1969) 1 SCR 103 : AIR 1969 SC 1] the Constitution Bench of this Court held that the members of an entire caste or community may in the social, economic and educational scale of values, at a given time be backward and may on that account be treated as backward classes, but that is not because they are members of a caste or community but because they form a class. Therefore, it is clear that there may be instances of an entire caste or a community being socially and educationally backward for being considered to be given protection under Article 15(4).

87. In M. R. Balaji and Others v. State of Mysore (supra), it was observed that it is doubtful if the test of average student population in the list, three High School Classes as appropriate in determining the educational backwardness and that it may not be necessary or proper to put the test as high. Even in respect of educational State average it was observed in the said decision that the legitimate view to take would be that classes of citizens whose average is well below the State average can be treated as educationally backward. But here again it was emphasised that the court does not propose to lay down any hard and fast rule as it is for the State to consider the matter and decide it in a manner which is consistent with the requirements of Article 15(4). These observations made by this Court in the above decisions have, in our opinion, been misapplied by the High Court to the case on hand. It has proceeded on the basis that it is axiamatic that the educational average of the class should not be calculated on the basis of the student population in the last three High School Classes and that only those classes whose average is below the State average, that can be treated as educationally backward. This Court has only indicated the broad principles to be kept in view when making the provision under Article 15(4).

88. The High Court has committed another error in that it has proceeded on the basis that the groups whose inclusion as backward classes in the 1963 and 1966 lists, prepared by the State, which were struck down by the High Court, have again been included in the present list by the Commission. The High Court has missed the fundamental fact that those two lists were struck down by the High Court on the ground that the State had made no investigation whatsoever, nor had the State collected the relevant materials before classifying the groups as Backward Classes. It was on that ground that those lists were struck down by the High Court. In fact this Court also affirmed the latter decision of the Andhra Pradesh High Court striking down the 1966 list in its decision in State of Andhra Pradesh and Another v. P. Sagar (supra). Though we are not inclined to agree with the decision of the High Court that the enumeration of groups as Backward Classes by the Commission is solely on the basis of caste, we will assume that the High Court is right in that view. There are two decisions of this Court where the list prepared of Backward Classes, on the basis of caste has been accepted as valid. No doubt, this Court was satisfied on the materials that the classification of caste as Backward Classes was justified.

89. The first decision is Minor P. Rajendran v. State of Madras (supra). A Constitution Bench of this Court had to consider certain rules framed by the State of Madras for selection of candidates for admission to the 1st Year Integrated M.B.B.S. Course. One of the rules, the validity of which had to be considered, was Rule 5 providing for reservation for socially and educationally Backward Classes, referred to in the Government Order No. 839/Education, dated April 6, 1951, as subsequently amended. The challenge was that the said rule violated Article 15 of the Constitution as the list prepared by the State was exclusively on the basis of the caste. The State of Madras, after giving the history as to how the list of Backward Classes was made starting from the year 1906, had referred to the fact that the list was made up-to-date by making necessary amendments thereto. It was further pointed out on behalf of the State that the main criteria for inclusion in the list was the social and educational backwardness of the caste based on occupations pursued by those castes. It was further pleaded that as the members of the caste as a whole were found to be socially and educationally backward, they were put in the list. The State further pointed out that after the Constitution came into force, the list was examined in the light of Article 15(4) and the same list which continued from 1906 was adopted for purposes of Article 15(4) as the entire caste was socially and educationally backward.

90. This Court accepted the explanation given by the State of Madras and held that though the list shows certain castes, members of those castes were really a class of socially and educationally backward citizens. This Court held as a fact that the list prepared by the State was castewise, nevertheless, as the castes included in the list were as a whole socially and educationally backward, the list was not violative of Article 15. In this view Rule 5 as well as the lists of Backward Classes were held to be valid. The following observations of this Court are opposite :

"The contention is that the list of socially and educationally Backward Classes for whom reservation is made a Rule 5 is nothing but a list of certain castes. Therefore, reservation in favour of certain castes, based only on caste considerations violates Article 15(1), which prohibits

discrimination on the ground of caste only. Now if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is socially and educationally backward class of citizens within the meaning of Article 15(4)..... It is true that in the present cases the list of socially and educationally backward classes has been specified by caste. But that does not necessarily mean that caste was the sole consideration and that persons belonging to these castes are also not a class of socially and educationally backward citizens....."

91. The above decision has been quoted with approval in State of Andhra Pradesh and Another v. P. Sagar (supra), and it has emphasised that the principles laid down therein do not make any departure from those laid down in the previous decision.

92. The next decision of this Court where a list prepared on the basis of caste, on the ground, that the entire caste was socially and educationally backward was approved as valid under Article 15(4) is one Minor A. Periakaruppan v. State of Tamil Nadu and Others (supra). In this decision unitwise distribution of seats for the Medical Colleges was struck down by this Court as violative of Articles 14 and 15, nevertheless the list of Backward Classes, which was challenged, as having been framed on the basis exclusively of caste, was held to be valid. This Court after referring to the decisions in M. R. Balaji and Others v. State of Mysore (supra) and R. Chitralekha and Others v. State of Mysore (supra), held that caste is a relevant factor in ascertaining a class for the purpose of Article 15(4). The decision in Minor P. Rajendran v. State of Madras and Others (supra), was also quoted with approval and the said decision was relied on as an authority for the proposition that the classification of Backward Classes on the basis of caste is within the purview of Article 15(4), if those castes are shown to be socially and educationally backward. After a perusal of the list of Backward Classes, which was under challenge, this Court held that though the list has been framed on the basis of caste, it does not suffer from any infirmity because the entire caste was substantially, socially and educationally backward. On this basis the list of Backward Classes was held to be valid. It may be mentioned that the list which was under challenge was more or less substantially the same as this Court held to be valid in Minor P. Rajendran v. State of Madras and Others (supra).

93. At this stage it may be recalled that the State of Andhra Pradesh originally formed part of the Composite State of Madras. We sent for the paper book in Writ Petition No. 285 of 1970, the decision of which is reported in Minor P. Rajendran v. State of Madras and Others (supra). On a comparison of the list, which was under challenge in the said decision, but accepted as correct by this Court, with the list which is under attack before us, we find that most of the groups whose inclusion in the list by the State of Madras was held to be valid are also found in the list prepared by the Backward Classes Commission appointed by the Andhra Pradesh State.

94. 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 clear 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 in 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.

95. The Commission has given very good reasons as to why it had to take into account the population figures based upon the 1921 and 1931 censuses. It was also justified in taking the average student population of Classes X and XI, especially as the said procedure has been accepted by the Committee appointed by the Jammu and Kashmir Government, presided by Dr. P. B. Gajendragadkar, former Chief Justice of India. That Committee took into account IX and X standards average. The decided cases have laid down the principles for ascertaining the social and educational backwardness of a class. The Backward Classes Commission in this case has taken considerable pains in collecting data regarding the various aspects before including a particular group as Backward Class in the list.

96. There is a criticism levelled that the Commission has used its personal knowledge for the purpose of characterising a particular group as backward. That, in the circumstances of the case, is inevitable and there is nothing improper or illegal. The very object of the Commission in touring the various areas and visiting the huts and habitations of people is to find out there actual living conditions. After all that information has been gathered by the Commission not secretly but openly. In fact the actual living condition of inhabitation can be very satisfactorily judged and found out only on a personal visit to the areas which will give a more accurate picture of their living conditions and their surroundings. If the personal impressions gathered by the members of the Commission have also been utilised to augment the various other materials gathered as a result of detailed investigation, it cannot be said that the report of the Commission suffers from any vice merely on the ground that they imported personal knowledge. In our opinion, the High Court has not been fair to the Commission when it says that whenever the Commission found the figures obtained in respect of certain groups as relating to their educational standard being higher than the State average, it adopted an ingerious method of getting over that obstacle by importing personal knowledge. In fact the Commission has categorically stated that the information received from the various schools showed that the percentage of education was slightly higher than the State average in respect of certain small groups, but in view of the fact that their living conditions were deplorably poor, the slight higher percentage of literacy should not operate to their disadvantage.

97. Regarding the criticism that the Commission has divided classes into more backward and less backward, in our opinion, this is not also well founded. On the other hand, what the Commission has recommended was the distribution of seats amongst the reserved classes in proportion to their population. This is not a division of the Backward Classes as more backward and less backward as was the case which was dealt with by this Court in M. R. Balaji and Others

v. State of Mysore (supra).

98. There was a contention raised by Mr. Tarkunde, learned counsel for the respondents, that the total number of seats that could be given to the candidates belonging to the Backward Classes cannot exceed the percentage of reservation made in their favour. That is, according to the learned counsel, if more than the reserved quota amongst the Backward Classes candidates, have secured seats on merit, there can be no further selection of candidates from the reserved group.

99. No doubt our attention was drawn to a decision of the Kerala High Court, which has held that reservation is irrespective of some of the candidates belonging to the Backward Classes, getting admission on their own merit. The Andhra Pradesh High Court has taken a slightly different view. If a situation arises wherein the candidates belonging to the groups included in the list of Backward Classes, are able to obtain more seats on the basis of their own merit, we can only state that it is the duty of the Government to review the question of further reservation of seats for such groups. This has to be emphasised because the Government should not act on the basis that once a class is considered as a backward class, it should continue to be backward for all time. If once a class appears to have reached a stage of progress, from which it could be safely inferred that no further protection is necessary, the State will do well to review such instances and suitably revise the list of Backward Classes. In fact it was noticed by this Court in Minor A. Periakaruppan v. State of Tamil Nadu and Others (supra), that candidates of Backward Classes had secured nearly 50% of seats in the general pool. On that ground this Court did not hold that the further reservation made for the Backward Classes is invalid. On the other hand it was held :

"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."

100. The only another aspect that has to be dealt with is the quantum of reservation made for the Backward Classes. It was held in M. R. Balaji and Others v. State of Mysore (supra), that the total of reservation for Backward Classes, Scheduled Castes and Scheduled Tribes should not ordinarily exceed 50% of the available seats. In the case before us, under G.O. No. 1973 of 1970, the total reservation is only 43%. The break-up of that percentage is 25%, 4% and 14% for the Backward Classes, Scheduled Tribes and Scheduled Castes respectively. The quantum of reservation is thus well within the limits mentioned in the decision, referred to above.

101. For the reasons given above, we are of the opinion that the list of Backward Classes, as well as the reservation of 25% of seats in Professional Colleges for the persons mentioned in the said list is valid and is saved by Article 15(4) of the Constitution. We are not inclined to agree with the reasons given by the High Court that the said G.O. offends Article 15(4) of the Constitution.

102. To conclude, we agree with the findings of the High Court that reservation of 40% of

seats to the H.S.C. candidates to the Ist Year Integrated M.B.B.S. Course under Rule 9 of G.O. No. 1648 of 1970 is invalid. That provision has been rightly struck down by the High Court. To that extent the judgment and orders of the High Court are confirmed.

103. We, however, differ from the decision of the High Court regarding the invalidity of G.O. No. 1793 of 1970. On the other hand we hold that the said G.O. is valid and is saved by Article 15(4) of the Constitution. The judgment and orders of the High Court to the extent of striking down the said G.O., in consequence are set aside.

104. In the result, the judgment and orders of the High Court striking down G.O. No. 1793 of 1970 are set aside and the appeals allowed in part to that extent. In other respects the appeals will stand dismissed. There will be no order as to costs in the appeals. It has been represented on behalf of the State that the admissions already given to the writ petitioners will not be disturbed.