

WP(C) 327/2002
BEFORE
THE HON'BLE MR. JUSTICE I. A. ANSARI

(1) Claiming to be perplexed at the decision of the State Government and challenging the virus and constitutionality of the State cabinet's decision to select and nominate candidates for pursuing the courses of mbbs and BDS on the basis of a policy, which provides for making selection and nomination of those candidates, who do not come within the zone of consideration on the basis of the merit list prepared following the Joint Entrance Examination (hereinafter, in short, called as \the JEE\), but are from such districts (s) from which no candidate could be selected on the basis of merit alone for pursuing the said courses, the principle, thus, being that each district of the State must get representation if any of its candidate has received the requisite qualifying marks, though he may be far lower than others in the merit list, the petitioners have approached this Court.

(2) By this application made under article 226 of the Constitution of India, the petitioners, who find their names mentioned in the merit list prepared after the JEE, held for selecting candidates for, inter alia, MBBS and BDS Course, for academic session 2002-2003, has approached this Court with prayer for, inter alia issuing writ (s) setting aside and quashing the State Cabinet decision taken in the year 1992 and communicated to the selection Committee concerned vide government's policy letter, dated 23. 6. 95, (Annexure 3 to the writ petition) issued by the Commissioner (Personnel) of the government of A. P. , Itanagar.

(3) After the affidavit-in-opposition was filed in this case by the State respondents, the writ petitioners filed an additional affidavit and, thus, the case of the petitioners, which has finally emerged from their pleadings, may, in a narrow compass, put as follows. The petitioners are members of the local scheduled tribes and are permanent residents of the State of Arunachal Pradesh. The petitioners have passed Class xi examination with good marks from science stream and are eligible to be selected for admission to the post of MBBS and BDS in the colleges of any university. The Government of Arunachal Pradesh receives, every year, some seats for distribution amongst students of Arunachal Pradesh for medical courses, namely, mbbs and BDS from Government of India as well as from regional medical institutions colleges on the ground that there is no Institution, in the State of Arunachal Pradesh, to impart such education. The seats so received are required to be distributed amongst the students, who qualify in the JEE (held for this purpose) in order of their merit. For the purpose of making selection, students are categorised into four categories, namely, Category-I, which comprises of all Tribal Students of Arunachal Pradesh and includes the children of State Govt servants as well as all India service officers. Category-II, which comprises of children of Non-Tribal employees of the govt of Arunachal Pradesh, Category-III, which comprises of children of Non-Tribal all India Service employees and includes, the children of employees of P and T, BRTF, crpf, Army etc who have served, at least two years in Arunachal Pradesh, Category-IV, which consists of children of Non-Tribals, who have been staying for number of years in Arunachal Pradesh and are engaged in business or are privately employed and that 80% of seats are reserved for Category I, 12% for Category-II, 04% for Category-III and 04% for category-IV. This year also, a JEE was conducted and the result of the said examination has been published on 19. 6. 2002. The minimum qualifying marks in the JEE was 30% for APST and 45% for non APST candidates. In the merit list so published, petitioner Nos 1 to 7 appear at serial No. 24, 26, 27, 28, 29, 30 and 31 respectively. This year, same as the last year, the seats allotted by the Central government are 24 for MBBS and 2 for bds courses and the seats offered by regional colleges/institutions are 10 for mbbs and 3 for BDS courses. As per the relevant guidelines issued by the Central government, the State of Arunachal Pradesh has to nominate the candidates strictly as per the merit list in order of their merit from the top. The petitioners had legitimate expectation of being nom

inated for MBBS and BDS courses, on their own merit, but to the utter dismay of the petitioners, they have been informed by the authorities concerned that the nomination will not be based entirely on merit, because there is a standing cabinet decision of the state of A. P. adopted way back in the year 1992 (though not advertised), whereby it stood resolved that no district of the State should go unrepresented, while selecting the candidates for MBBS and BDS courses. In other words, if a particular district goes unrepresented on account of the fact that no candidate from such a district can be nominated strictly on merit, then if such a district has candidate (s), who stand (s) included in the merit list on securing the minimum qualifying marks, then, such candidate (s) will be nominated as representative of such unrepresented district (s), though such candidate (s) may not be as meritorious as others in the merit list. In the merit list prepared for the current years, as many as 7 districts are: unrepresented and accordingly, candidates from these unrepresented districts will be: selected superseding the petitioners for the: courses of medical education. If the merit: list is not strictly adhered to, then, the object and purpose of JEE will be defeated inasmuch as JEE is held for making selection on merit. The Cabinet decision aforementioned has no fixed criteria, it leaves a wide discretion/scope for manipulation, it makes no intelligible differentia between candidates of scheduled tribes and it will serve no meaningful purpose. This policy, if allowed to be implemented, will have far reaching effect on meritorious candidates/ students and ruin the quality of medical educational and profession in the State of Arunachal Pradesh. The Cabinet decision has been reached with ulterior motives and on extraneous considerations and unless checked, it will facilitate vested interests to nominate their own candidate (s) at the cost of merit. Such a policy of making selection on the basis of unrepresented districts is violative of Articles 14 and 15 of the Constitution of India, hence, the cabinet decision/government policy, in question, deserves to be set aside and quashed.

(4) The State respondents, namely, respondent Nos. 1 to 4 have contested this case by filing their affidavit-in-opposition. Though the respondents initially disputed that this year, seven districts would go unrepresented, they have, at the time of hearing, confirmed that the number of seats received by them under both the quota aforementioned is what the petitioners have contended to be and that candidates from as many as seven districts will be selected on the basis of the said policy. According to these respondents, the State government has chosen its own reservation policy in the interest of people of the State. The impugned policy adopted by the State cabinet is in tune with the prevailing scenario in the field of education in the State and, hence, it is not discriminatory nor will it lower down the quality of medical education. The petitioners were well-aware of the instructions under Clause 20 of the application form, which indicated existence of the impugned policy, but they did not make representation for modification of this policy, when they appeared for the Joint Entrance examination. In order to ensure economic, social and educational upliftment of the backward people of Arunachal Pradesh, the State Cabinet has decided to keep some quota in MBBS seats for unrepresented district (s) from the North East quota and not from the Central quota as alleged by the petitioner. By letter, dated 27. 1. 2001, the Govt. of A. P. had sanctioned rupees 69,93,000/- as pro-rata contribution to IIMC, Imphal, for the year 2001-2002. This shows that it is the State Government, which pays for the seats in regional institutes/colleges and that seats in these institutes/colleges are not allotted by the central Government. Hence, the State government is free to adopt its own policy for selecting candidates for regional institutes/colleges. The policy, in question, is applied only in respect of MBBS seats received under regional pool and not under the Central pool.

(5) I have carefully perused the materials on record. I have heard Mr. K Ete, learned counsel for the petitioners, and Mr. B. L. Singh learned Senior Govt. Advocate for the State respondents.

(6) Before entering into the discussion of the merit of this writ petition, it

is essential to note that on an application made on the ground that her interest and rights are likely to be affected by the outcome of this writ petition, respondent No. 5 has been made a party in this writ petition and Mr. P. K. Tiwari, learned counsel for the respondent No. 5 has also been heard by this Court.

(7) It is submitted by Mr. K. Ete, on behalf of the petitioners, that this year i. e. in 2002, the Central Government has allotted 34 seats for MBBS and 5 seats for BDS courses for the students of Arunachal Pradesh and according to the guidelines issued by letter, dated 28. 7. 95 (Annexure-4 (a) to the writ petition) of the Government of India, Ministry of Health and Family Welfare, selection of the candidates has to be made in accordance with objective consideration of merit alone, but violating these guidelines, the State Government, with the help of its impugned Cabinet decision, has, as per letter, dated 23. 6. 95 (Annexure-3 to the writ petition) issued by Commissioner (Personnel) decided to make selection not entirely on the basis of merit, but on extraneous considerations inasmuch as what this policy lays down is that no district of the State should be left unrepresented and if this policy is allowed to be implemented, then, the petitioners, who are otherwise, entitled to be nominated on the basis of the merit list (Annexure-1 to the writ petition) will be denied their right to study medicine. It is also submitted by Mr. Ete that according to the norms fixed for making selection of the candidates following the JEE, there are four categories of candidates and the quota for each of these categories stand fixed. As per the norms, so fixed, points out Mr. Ete, the petitioners, as APST candidates, come within the purview of category No. 1 and their strength in the selection, to be made, has to be 80% but after making the reservation, the said policy decision seeks to dilute this reservation by allowing the State Government to make selection of candidates on the basis of representation of all the districts in the State, which may bring in candidates from general category inasmuch as this policy does not state that only APST candidates will be selected on the basis of this policy. It is also contended by Mr. K. Ete that within the reserved category, another reservation, based on district alone, is impermissible in law. Reference is made by Mr. Ete to Mohan Bir Singh Chawla Vs. Punjab University, (1997) 2 SCC 171, to show that district-wise reservation for making selection to educational institutions is constitutionally impermissible.

(8) Mr. Ete further submits that the distinction between two categories of candidates which the Government policy decision aims at making, is not based on intelligible differentia and there is no nexus between the distinction made and the object sought to be achieved. The policy is, therefore, submits Mr. Ete, completely in violation of the provisions of Article 14 and 15 of the Constitution of India and may, therefore, be struck down. It is contended by Mr. Ete that the said policy decision is vague and leaves wide room for manipulation by the Selection Committee inasmuch as it does not clearly state as to whether the unrepresented districts will be allowed to be represented by a tribal or a non-tribal candidate.

(9) Controverting the above submissions made on behalf of the petitioners, learned senior Government Advocate has submitted that all the 34 seats meant for MBBS and 5 seats meant for BDS courses have not been allotted under the Central quota. The total seats allotted under the central Pool is points out learned Senior Government Advocate, 24 for MBBS and 2 for BDS courses, the remaining 10 seats for MBBS and 3 seats for BDS courses, further points out learned Sr. Govt. Advocate, is given by various regional colleges/institutes, which the State Government makes payment for.

(10) As far as the policy decision is concerned, the same, submits learned senior Government Advocate, has been adopted, because it gives an opportunity for studying medicine to residents of all the districts of the State, which is, as a whole, educationally and economically backward. With the help of this decision, the State Government aims at making developments in the field of medicine in all

its districts and such a decision cannot be challenged on the anvil of the law of equality inasmuch as this policy decision makes no discrimination among the tribals on the basis of their places of residence, but only aims at giving benefits to all the districts of the State.

(11) The learned Senior Government advocate also submits that though the above decision does not clearly specify, the fact remains that the decision is being applied only for APST candidates and, hence, every APST candidate may have the opportunity of becoming beneficiary of this policy and no one can, therefore, agitate that the same is discriminatory and/ or unconstitutional.

(12) The cabinet decision, points out learned Senior Government Advocate, applies only to the Central Pool and not to the seats to be allotted in regional colleges/ institutes like Regional Institute of Medical science, Imphal.

(13) The learned Senior Government advocate further submits that this cabinet decision is not subject to judicial review inasmuch as it is a policy decision of the state Government and it has been issued under the State Government's rules of executive business.

(14) Reacting to the above submissions, Mr. K Ete has pointed out that the said cabinet decision nowhere clearly lays down that it will be applied for the purpose of nominating APST candidates only and/ or that it will not be applied in the case of candidates seeking admission for courses other than MBBS or BDS. In fact, in the year 1998, on the basis of this policy, points out Mr. K Ete, candidates for engineering courses were also selected. Reliance in support of this contention is placed by Mr. K Ete on Annexure-A, which is the select list prepared following jee held in the year 1998.

(15) As far as Mr. P. K. Tiwari, learned counsel for the respondent No. 5 is concerned, his submission is that Arunachal Pradesh Rules of Executive business, 1987, came into force on 27. 4. 87 and under the schedule to these Rules, major policy are brought, subject to the orders of the Chief Minister, before the cabinet for decision and the cabinet decision, so reached, is an exercise of powers under Article 116 of the constitution of India. Mr. Tiwari, however, does not contend that a cabinet decision, when implemented in the form of executive instruction/policy/direction of the State, the same cannot be subjected to judicial review.

(16) Mr. Tiwari, however, submits that the writ petitioners have no right under the constitution to challenge the said cabinet decision, which seeks to give some protection or benefit to the APST candidates. Mr. Tiwari submits that though this cabinet decision does not clearly specify, a close reading of the same shows that the beneficiary of this policy will be the local tribal people inasmuch as almost cent percent of the population of the State of Arunachal Pradesh are tribals and since the terrain, topography and socio-geographical complexities of the State shows that apparently, medical facilities do not exist all over the State, it is not improper, in such a situation, when the state is struggling for an over-all improvement of all its districts and regions, to have a policy, which can secure medical facilities for all its citizens all over the state, and the petitioners cannot claim to have, any right, far less fundamental right, to object thereto inasmuch as Article 15 of the Constitution of India, points out Mr. Tiwari, is only an enabling provision for the State to make reservation for those, who are covered by these provisions of this article, but it gives no enforceable right to any one to demand from the State that he/she alone shall be beneficiary of reservation policy. In support of this submission, Mr. Tiwari places reliance on air 1985 Bom 153 (Anil Vs The Dean, government Medical College, Nagpur and others).

(17) The writ petitioner, points out Mr. Tiwari, do not figure in the merit li

st on account of their merit alone inasmuch as all of them are APST candidates and they vie for selection on the basis of reservation made for APST candidates, because the norms for selection of candidates makes reservation to the extent of 80% for APST candidates and since the petitioners are themselves beneficiaries of reservation policy, they cannot object as to why the benefit of some more reservation is being given to unrepresented districts.

(18) Mr. Tiwari has further pointed out that the merit list relied upon by the petitioners is, in fact a merit list, which is subject to the reservation policy of the state and this is permissible under the constitution and, hence, the fact that the reservation policy of the State seeks to make a distinction between two persons of the same reserved category cannot be objected to if the distinction is made for justifiable reasons. In the case at hand, submits Mr. Tiwari, the distinction has been made for justified reasons and the petitioners cannot object thereto.

(19) Mr. Tiwari contends that it is not entirely correct to say that no reservation can be made on the basis of place of residence. Reservations can be made, asserts Mr. Tiwari, even on the basis of place provided the inhabitant/citizens of the place, so chosen can be categorised as a class of citizens, who are backward within the meaning of Article 15 (4) and deserve reservation. In the case at hand, contends Mr. Tiwari, since the entire State of Arunachal Pradesh is a tribal State and medical facilities all over the State is negligible, the district, which remains unrepresented in the merit list prepared following the JEE, can be treated as a class in itself and can be given benefit of adequate reservation. In support of his contention that reservation even on the basis of place/area is possible. Mr. Tiwari has referred me to Kumari Chitra Ghosh and another Vs. Union of India and others, (1969) 2 SCC 228, Dr. Narayan Sharma and another Vs. Dr. Pankaj Kumar Lehar and others, (2000) 1 SCC 44, 2000 (1) GLT (SC) 13 State of Uttar Pradesh and others vs Pradip Tandon and another, (1975) 1 scc 267, and Ahmedabad Municipal corporation and another Vs. Nilaybhair thakore and others, (1999) 8 SCC 139.

(20) Upon hearing learned counsel for the parties and upon perusal of the materials on record, what emerges as the admitted facts, in this writ petition, are that the petitioners are members of various scheduled Tribes of Arunachal Pradesh. The petitioners appeared in the Joint entrance Examination (as j. E. E.) which has been held this year for the purpose of selecting candidates for pursuing studies in MBBS, BDS, etc, courses Every year, the Government of Arunachal Pradesh receives from the central Government certain number of seats for distribution amongsts the students of Arunachal Pradesh for MBBS and BDS courses on the ground that Arunachal Pradesh has no institution/college/ university, which imparts such education. The State Government also receives seats for these courses from various regional colleges/institutions, but it pays for such seats. For the seats received under Central as well as Regional pools, a common JEE is held and a common merit list is prepared. As usual, this year too, the quota of seats received under the Central pool is 24 for mbbs and 3 for BDS courses and the quota for seats received under the Regional pool is 10 for MBBS course and 3 for BDS course.

(21) Thus, on the basis of the JEE held this year, candidates are to be nominated in respect of altogether 34 seats for MBBS and 5 seats for BDS. The qualifying marks for APST candidates is 30% and for non-APST candidates it is 45%. For the purpose of making selection, the seats, as per the state Govt. policy, stand divided into 4 (four) categories as mentioned hereinbefore at para 3. The distribution of seats for these above 4 (four) categories will be, as per the relevant policy, 80% for categories-I, 12% for Categories-II, 4% for categories-III and 4% for categories-IV.

(22) There is a standing instruction, issued on 23. 6. 95 (Annexure-3 to the w

rit petition) by the Commissioner, Personnel, government of Arunachal Pradesh. These instructions are based on a cabinet decision adopted in the year 1992. According to this decision/policy, while making selection for mbbs and BDS courses on the basis of merit, no district of the State should be left unrepresented. In view of the fact that this year, there are as many as 7 (seven) districts from where no candidate, out of the APST candidates, can be selected on the basis of merit alone, the Selection committee concerned will, admittedly, with the help of this policy decision, nominate candidates from these seven unrepresented districts and thereby the writ petitioners, who would have otherwise, received the nomination, will not be selected.

(23) It is also worth noticing that according to the State respondents, selection in respect of seats allotted under the Central pool will be made strictly on merit and not with the help of the said policy decision. The petitioners have, however, pointed out that the State respondents have, in the past, used the said policy decision for making selection not only in respect of quota of seats received under the Central pool, but also in respect of seats allotted under the regional pool inasmuch as in the year 1998, the candidate at serial No. 1 bearing Roll No. 1561, namely, Shri Bhani Vayon opted for IIT and this seat was allotted to the candidate, at serial No. 16. bearing Roll No. 1667, namely, Shri Nima Bodi, who was from east Kameng District and she was so recommended for BDS course by taking recourse to the said policy decision on the ground that East Kameng District was unrepresented. The State respondents have not disputed this fact.

(24) Thus, it is clear that this policy was applied in the past, while selecting candidates not only for the seats under the regional pool but also in respect of seats under the central pool. In other words, the policy, in question, can be applied and is capable of being applied in respect of seats allotted under the central Pool as well as the Regional pool.

(25) Since the policy has been applied and can, if need arises, be applied in respect of both Central pool as well as Regional pool, it becomes immaterial whether the seats sought for by the petitioners are in respect of Central quota or Regional quota.

(26) In the face of the facts stated hereinabove, I am, now, required to determine the virus and constitutionality of the Cabinet decision/government policy aforesaid.

(27) While considering the above aspect: of the matter, it needs to be borne in mind that though the writ petitioners have contended that selection for medical courses shall be made on merit, the fact remains that the petitioners too are beneficiary of the reservation policy of the state inasmuch as the selection for MBBS and BDS courses is not really made solely on merit, because ultimate selection from the merit list is subject to the State government's reservation policy, which has divided the candidates into 4 (four) categories as hereinabove mentioned and the petitioners, on account of such reservation policy, receive, as members of local tribes, as many as 80% of the total number of seats. Thus, though according to the instruction/information conveyed to the candidates, vide Annexure 4 (b) to the writ petition, the selection will be made strictly on merit from the top as per availability of the seats, this merit list is really subject to the reservation policy of the State Government.

(28) In the above backdrop let me, now, determine the merit of this writ petition. While considering the merit of the writ petition, it is of paramount importance to recall the observations in Mohan Bir Singh Chawla (supra) wherein, after considering a large number of leading judgments on various reservation policies governing admission in educational institutions, the apex Court observed and laid down as follows.

\15 (c) The rule of preference on the basis of domicile/requirement of residence is not bad provided it is within reasonable limits, i. e. it does not result in reserving more than eighty five percent seats in graduate courses and more than seventy five percent seats in postgraduate courses. But district wise reservations are an anathema\ (Emphasis is supplied)

(29) In short, it can be seen from the above decision that the Apex Court has deprecated the policy of district wise reservation in respect of educational institutions.

(30) In the light of the above settled position of law, let me, now, turn to the policy, which is under challenge in the present writ petition. This policy decision emanates from cabinet decision which the state respondents have quoted in paragraph 7 of their affidavit-in-opposition and the same is reproduced hereinbelow\

\this policy of the State Government has been followed since the inception of Joint entrance Examination considering the regional imbalance and educationally backwardness of some communities in some parts of the State and thereby to create reasonable opportunity to all sections of people to avoid social tension amongst the different communities tribes of state. \ (Emphasis is added)

(31) The above policy, according to the state respondents, as reflected from paragraph 7 of their affidavit-in-opposition, has been followed since the inception of the JEE considering \the regional imbalance and educational backwardness of some communities in some parts of the State\ and the policy has been adhered to in order to create \reasonable opportunity\ for all sections of the people and to avoid social imbalance.

(32) From a bare reading of the above, it is clear that nomination of candidates from unrepresented district has been resorted to in order to give reasonable opportunity of participation to some of the communities, who are educationally backward and reside in some parts of the State so as to reduce the regional imbalance leading to tension among the different communities/tribes of the State. If these were the objects, then, the Government Policy ought to have identified those part/parts and/or area/ areas, which are inhabited by those communities, who are educationally backward.

(33) In the case at hand, however, if the policy is considered, in the light of the objective that it seeks to achieve, the policy appears to be self-defeating. For instance if the district (A) is a district, which is not as backward as district (B), yet the policy reserves the right to select or nominate candidate from district (A), in preference to district (B), on the ground that no candidate from the district (A), has qualified to be included in the merit list and thereby though the district (B) is educationally more backward than district (A), the candidate from district (B) will be denied the right to be selected for the courses indicated above. Another difficulty in allowing the policy to be implemented is that out of the 15 districts of the State of Arunachal Pradesh, assuming that the candidates, if selected on merit, are from only three districts, then as per the said policy, the remaining 12 districts will have to be given representation notwithstanding the fact that the candidates coming from these districts are far below in the merit list in comparison with other candidates, though out of the 12 districts so required to be represented, there may be only six districts which are educationally more backward in comparison with other districts. Viewed from this angle, the policy is vague, directionless, fluid, indefinite and irrational.

(34) Since the object of the policy, according to the affidavit-in-opposition of the State respondents is to remove the regional imbalance, the policy ought to have, first, identified, as indicated hereinabove, the area/areas which are educationally backward.

educationally backward, but this has not been, admittedly done. Since the State of Arunachal Pradesh is, as a whole, populated by various tribes and if there has to be any reservation among these tribal communities, then the classification to be made has to be based on intelligible differentia. Since the policy does not identify the area/areas, which are educationally backward, there is really no intelligible differentia to apply this policy. In this view of the matter, there is no nexus between the object to be achieved and the intelligible differentia.

(35) In other words, had the policy identified the area/areas relevant to the policy, the policy could have, perhaps, attained/achieved the object, but since the areas are not identified, the policy can not achieve the object, which the policy is claimed to have been adopted for. The policy is, therefore, as indicated above, self-defeating and cannot be said to have any reasonable nexus with the object to be achieved.

(36) There is yet another serious flaw in the policy. Supposing that the district, which remains unrepresented, is a district from where there is no tribal candidate then this district will get a non-tribal candidate, which may have the effect of denying the right of selection to a tribal candidate, who may be higher in the merit list than the non-tribal candidate to be so selected. Though the aim of the policy is to improve the condition of indigenous communities, the beneficiary as well as the casualty of such a policy may even be candidates from general category inasmuch as the policy nowhere clearly states that it is meant only for tribal communities of the State. As far as the candidates from the general category are concerned, they do not deserve any reservation of the kind, which is envisaged by this policy, but even they may, at times, become beneficiary of such a policy.

(37) It may be noted here that according to paragraph 20 of the important instructions/information conveyed to the candidates, vide Annexure-iv (b) to the writ petition, the candidates are required to disclose their residence so that if need be, they may be considered on the basis of unrepresented district for allotment of seats in the MBBS course. The word \residence\ conveys the place, where one lives or resides or dwells; it does not necessarily mean the place of birth. If, with the help of the policy, \resident\ of the district has to be nominated/selected, then, \the resident\ will obviously include even Non-APST candidate, though the object of the policy is, according to the State respondents affidavit, not to give benefit to the Non-APST candidate, but to reduce the regional imbalance by giving benefit thereof to the APST candidates alone.

(38) The cabinet decision speaks of giving benefit of reservation policy to the candidates for MBBS and BDS courses, but paragraph 20 of Annexure IV (b) aforementioned shows that the benefit of the concept of unrepresented district will be given only in respect of MBBS courses inasmuch as it states.

\residence of candidates shall be counted on the basis of ST certificate issued by the commissioner in respect of APST candidate for the purposes, if occasion arises to consider him/her against unrepresented district for allotment of seat in MBBS\ (Emphasis is supplied)

(39) Though the Government, now, submits that the selection with regard to the seats under the Central pool will be made on merit and that the reservation policy will be applied only in respect of seats under the Regional pool, the policy is silent in this regard and no wonder, therefore, that in the past, as indicated hereinabove, the policy was, indeed, utilised for making recommendation/selection in respect of seats allotted under the Central pool too. The policy can, therefore, be arbitrarily resorted to, which is yet another glaring defect/weakness of the policy.

(40) What crystallizes from the above discussion is that there is, strictly sp

eaking, neither firm correlation between the policy adopted and the information regarding the policy conveyed to the candidates concerned nor is there any consistency between the past implementation and interpretation of the policy and the submissions, now, made on behalf of the state respondents. The policy is, therefore, capable of being arbitrary used. In short the policy is rudderless and it is like an unguided missile.

(41) In the face of the law laid down in *mohan Bir Singh Chawla* (supra), this court has no option but to hold that district-wise reservation is not possible. Realising this position, Mr. PK Tiwari, learned counsel appearing for private respondent No. 5, (who has approached this Court, as indicated above, on the ground that if the policy is resorted to, he/ she will be a beneficiary of the policy) has insisted that though the policy speaks of 'district', it may be read as areas dominated by educationally backward tribes of the State and any reservation made in favour of such educationally backward tribal community of the State is permissible in law. Reliance in support of this contention as indicated hereinabove, is placed by Mr. Tiwari on the law laid down in *Kumari Chitra Ghosh* (supra), *Dr. Narayan Sharma* (supra), *Dr. Pankaj kumar Lehar* (supra), *Pradip Tandon* (supra) and *Ahmedabad Municipal corporation's case* (supra).

(42) A careful reading of the Apex court's decision in *Pradip Tandon's case* (supra) shows, I notice, that if the citizens living in any particular area or areas can be brought within the meaning of, and treated as, 'socially and educationally backward classes of citizens', protection of reservation can be extended to them under Article 15 (4), because the accent in article 15 (4) is on 'classes of citizens' and 'socially and educationally backward class of citizens' of an area can be grouped together as a class of citizens. Such a grouping is not on the basis of caste, but on the basis of class, I am guided to adopt this view from the following observations in *Pradip Tandon's case* (supra) 'article 15 (4) speaks of socially and educationally backward classes of citizens. The backwardness contemplated under Article 15 (4) is both social and educational. Article 15 (4) speaks of backwardness of classes of citizens. The accent is on classes of citizens. Article 15 (4) also speaks of Scheduled Castes and Scheduled Tribes. Therefore, socially and educationally backward classes of citizens in article 15 (4) could not be equated with castes. Broadly stated, neither caste nor race nor religion can be made the basis of classification for the purposes of determining social and educational backwardness within the meaning of Article 15 (4). The socially and educationally backward classes of citizens are groups other than groups based on caste the traditional unchanging occupations of citizens may contribute to social and educational backwardness. The place of habitation and its environment is also determining factor in judging the social and educational backwardness. The expression 'classes of citizens' indicates a homogeneous section of the people who are grouped together because of certain likenesses and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens. The traits of social backwardness are these. There is no social structure. There is no social hierarchy. There are no means of controlling the environment through technology. There is no organisation of the society to create inducements for uplift of the people and improvement of economy. Building of towns and industries, growth of cash economy which are responsible for greater social wealth are absent among such classes. Social growth and well being can be satisfied by massive change in resource conditions. High lands and hills are to be developed in fiscal values and natural resources. Nature is a treasury. Forests, mountains, rivers can yield and advanced society with the aid of education and technology from an economic point of view the classes of citizens are backward when they do not make effective use of resources. Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The

hill and Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttarakhand areas illustrate they are educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education. Some people in the rural areas may be educationally backward, some may be socially backward, there may be few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty percent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. No reservation can be made on the basis of place of birth, as this would offend Article 15 the onus of proof is on the State to establish the reservations are for socially and educationally backward classes of citizens (Emphasis is added)

(43) From the above observations, it is clear that reservation is possible to be made on the basis of area/region provided that the inhabitants of area/region can, in consonance with the provisions of Article 15 (4), be clubbed together as a socially and educationally backward class of citizens. Article 15 (4), provides for making reservation so as to advance and develop any socially and educationally backward class of citizens. The class of citizens indicates a homogeneous class. If the people of a particular area/region are capable of being grouped together on the basis of their common traits, they can be treated as a class, but neither caste nor religion nor place of birth can be used as a uniform attribute to make them or convert them into a class of citizens. The majority of population of the State cannot be regarded as a class for the purpose of providing them protection as a socially and educationally backward class of citizens. If the whole of the State of Arunachal Pradesh is socially and educationally backward, the whole of the State's population becomes a class in itself and no reservation in such a case is possible under Article 15 (4), because no one living in any particular area can justify receiving reservation as a socially and educationally backward class unless the people living in such area/region are distinguishable from the rest of the State's population.

(44) Thus, a policy may be formulated by State for making reservation on the basis of a particular area or region, but for this purpose, the area (s) and/or region (s) to which the policy can be applied has to be identified and the people living therein must be capable of being clubbed together as a socially and educationally backward class. Reference, in this regard, may be made to Kumar Chitra Ghosh and another (supra), wherein the Apex Court has laid down as follows :

Article 14 forbids class legislation: it does not forbid reasonable classification. In order to pass the test of permissible classification two conditions must be fulfilled (1) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object sought to be achieved. The classification in all the cases is based on intelligible differentia, which distinguishes them from the group to which the appellants belong. It is the Central Government which bears the financial burden of running the medical College. It is for it to lay the criteria for eligibility. The Government cannot be denied the right to decide from what sources the admission will be made. 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. (Emphasis is added)

(45) Even in Ahmedabad Municipal Corporation's case (supra) the Apex Court has upheld reservation for the local students on the basis of their domicile, but w

When the distinction is sought to be made between residents of two different districts, of the same State on the basis of their social and educational status, the policy must, first, identify the area (s), which are socially and educationally backward and the benefit of this kind of reservation can be extended only to such identifiable/ identified backward areas and if two areas are backward, then, it has to be ascertained as to which one is more backward. If the areas of imbalance are not identified and no objective standard is fixed to enable the selection Committee to determine the area of imbalance, then, such a policy will not fall within the ambit of Article 15 (4) of the Constitution and such a policy will not be allowed to stand good on record. I am guided to adopt this view from the law laid down in *Miss Nishi Maghu and others Vs. State of Jammu and Kashmir and others*, (1980) 4 SCC 95, wherein it has been observed as follows :

\some of the categories mentioned in these orders have been challenged as arbitrary and unconstitutional. We may begin with the classification made for rectification of regional imbalance for which 18 percent of the seats are reserved. The criticism is that the order creating this category does not identify the areas which suffer from imbalance nor does it supply any guide-lines for the selection committee. It appears that the selection committee has admitted 9 candidates under this head whose names appear at serial Nos. 43 of 51 of the list of selected candidates annexed to the supplementary affidavit filed on behalf of the first respondent, State of Jammu and Kashmir. How exactly the selection committee understood what regional imbalance was and on what basis they accepted certain areas of the State as suffering from imbalance is not known. There was thus no objective standard to guide the selection committee. It must therefore be held that the classification made for rectification of regional imbalance without identifying the areas suffering from imbalance is vague and the selection made under this head are accordingly invalid. \ (Emphasis is supplied)

(46) Though Mr. Tiwari has *dr. Narayan Sharma* and another (*supra*), this case does not serve the cause of the respondent No. 5 inasmuch as in this case, the Apex Court has upheld the reservation of quota by North East Council for the states, which have no medical colleges of its own in the north-eastern region, but this reservation does not bring a distinction between the citizens/residents of the same state. This case, therefore, if I may reiterate, is not relevant for the purpose of the present writ petition.

(47) Unable to defend the policy, in question, Mr. Tiwari has taken recourse to technicality of law by submitting that the writ petitioners have no locus standi to file this writ petition and seek thereby reservation inasmuch as Article 15 (4), Mr. Tiwari points out, does not confer any rights, far less fundamental rights, on any one to seek reservation, because Article 15, correctly submits Mr. Tiwari, is merely an enabling provision. Reliance for this submission is placed by Mr. Tiwari in *Anil vs Dean, Government Medical College, Nagpur and ors.* (AIR 1985 Bom 853). Without determining whether the proposition of law, which Mr. Tiwari so seeks to advance, is correct or not, suffice it to mention here that in the case at hand, the facts are materially different from the one in the case of *Anil* (*supra*), which Mr. Tiwari relies upon. The petitioner in the said case approached Bombay High Court with the grievance that the candidates of the reserved category, who had been selected on merit, shall not be included within the percentage of seats kept reserved for the reserved category/ repelling this argument, the Bombay High court held that if a candidate from reserved category receives admission on merit, he cannot be counted outside, or excluded from, the limits fixed for the reserved category and no interference in such cases is possible if the overall percentage for the reserved category is maintained.

(48) Coupled with the above, what is essential to note is that the writ petitioners do not seek or ask for more seats than what has been already reserved under the reservation policy of the Government for apst candidates, what the petitioners want to ensure is that this reservation is not nullified/diluted by constit

tionally invalid policy. The petitioners want this court to test the constitutionality of the policy, in question, and determine if the same adversely affects the fundamental rights of the petitioners.

(49) Though it has been contended, on behalf of the Government, that a policy decision is not subject to judicial review, suffice it to mention here that plethora of judicial pronouncements conform that if the policy decision does not stand the test underlined under Article 14 and can be shown to be demonstratively arbitrary, irrational, capricious, discriminatory or violative of constitutional provisions, it can be struck down by the Court reference for this purpose, may be made to 1998 4 scc 117, 1997 9 SCC 495 and (2000) 8 scc 491.

(50) Normally, a candidate, who has appeared in a selection test knowing the rules and/or regulations and/or policy and/or the terms and conditions governing the selection process cannot turn back and challenge the rules, regulations or policy, as the case may be. This is the broad principle laid down in Madanlal and Others vs State of Jammu and Kashmir, (1995) 3 scc 486.

(51) To a pointed query made by this court in this regard, Mr. Ete has submitted that the policy decision was never published or made known to the candidates and though para 20 of the relevant instructions/information (Annexure-iv (b) to the writ petition) does tacitly indicate that candidate's selection may be considered \against an unrepresented district\, it nowhere clearly states as to what an \unrepresented district\ actually means. This apart points out Mr. Ete, the policy resorted to is glaringly unconstitutional and shockingly arbitrary and hence, such a policy deserves to be struck down.

(52) I find considerable force in the above submissions of Mr. Ete apart from the fact that the petitioners were not, strictly speaking ,unsuccessful candidates, the admitted fact remains that the policy under challenge was never advertised/ published and even para 20 does not, as correctly contended Mr. Ete state as to what actually an \unrepresented district\ means.

(53) Coupled with the above, when the government's policy is shockingly against the constitutional guarantees and when the policy itself is, because of its unreasonableness, arbitrariness and/or discriminatory nature, bad in law, such a policy may not be allowed by a writ court to stand good on record I am led to adopt this view on the basis of the Apex Court's decision in Raj Kumar and Others V s Shakti rai and Others, (1997) 9 SCC 527, wherein it has held as follows :

\the entire procedure is also obviously illegal. It is true, as contended by Shri Madhava reddy. that this Court in Madan Lai Vs. State of J and K and others decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal, he is estopped to question the correctness of the selection. But in this case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law. (Emphasis is added)

(54) Because of what have been discussed above and for the reasons mentioned hereinabove, I have no hesitation in holding that the policy, in question, as conveyed through the government's policy/letter, dated 23. 6. 95 (Annexure 3 to the writ petition) violates the provisions of Article 15 (4) and the same needs to be struck down.

(55) In the result and for the reasons discussed above, this writ petition succeeds. The impugned reservation policy is set aside and quashed as unconstitutional. The policy aforementioned shall be treated as non-est for the purpose of making selections/ nominations following the result of the JEE aforementioned.

(56) No order as to costs.