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which can be tried in courts. If the State contends that the respondents have lost their citizenship of India under s. 9 (2) of the Citizenship Act, it is open to the appellant to move the Central Government to consider and determine the matter, and if the decision of the Central Government goes against the respondents, it may be competent to the appellant to take appropriate action against the respondents. So far as the appellant's case against the respondents under Art. 7 is concerned, the High Court was right in holding that the respondents were not foreigners within the meaning of cl. 7 of the Order and cannot, therefore, be prosecuted under s. 14 of the Act. The appeal accordingly fails and is dismissed.

Appeal dismissed.

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M. R. BALAJI AND OTHERS

v.

STATE OF MYSORE

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Admission into Colleges—Reservation of seats for socially and educationally backward classes and Scheduled Castes and Scheduled Tribes—Scope of—Directive Principles—Supreme Court not to fix percentage—Constitution of India, Arts. 15 (4), 16 (4), 29 (2), 46, 340.

On July 26, 1958, the State of Mysore issued an order that all the communities excepting the Brahmin community, fell within the definition of educationally and socially backward classes and Scheduled Castes and Scheduled Tribes and 75% of seats in educational institutions were reserved for them. Similar orders reserving seats were issued on May 14, 1959, July 22,

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1959, June 9, 1960 and July 10, 1961. The percentage of seats reserved varied in various orders, but all of them were set aside when challenged.

On July 31, 1962, the State of Mysore passed another order which superseded all previous orders made by the State under Art. 15 (4) for reservation of seats. Under that order, the backward classes were divided into two categories, backward classes and more backward classes. The order reserved 68% of the seats in the engineering and medical colleges and other technical institutions for the educationally and socially backward classes and Scheduled Castes and Scheduled Tribes, and left only 32 per cent seats for the merit pool. The order was challenged by 23 petitioners by a writ petition under Art. 32. The petitioners contended that but for the reservations made by the impugned order, they would have been entitled to admission in the respective colleges for which they had applied. They contended that the classification made under the order was irrational and the reservation of 68% seats made by the order was a fraud on Art. 15 (4) of the Constitution.

Held, that the impugned order was a fraud on the constitutional power conferred on the State by Art. 15 (4) and the same be quashed. The impugned order categorises the backward classes on the sole basis of caste which is not permitted by Art. 15 (4). The reservation of 68% seats is inconsistent with the concept of the special provision authorised by Art. 15 (4). However, this Court would not attempt to lay down definitely and in an inflexible manner as to what should be the proper percentage for reservation.

Reservation should and must be adopted to advance the prospects of weaker sections of society, but while doing so, care should be taken not to exclude admission to higher educational centres of deserving and qualified candidates of other communities. Reservations under Arts. 15 (4) and 16 (4) must be within reasonable limits. The interests of weaker sections of society, which are a first charge on the States and the Centre, have to be adjusted with the interests of the community as a whole. Speaking generally and in a broad way, a special provision should be less than 50%. The actual percentage must depend upon the relevant prevailing circumstances in each case.

The object of Art. 15 (4) is to advance the interests of the society as a whole by looking after the interests of the weaker elements in society. If a provision under Art. 15 (4) ignores the interests of society, that is clearly outside the scope of

Art. 15 (4). It is extremely unreasonable to assume that in enacting Art. 15 (4), Parliament intended to provide that where the advancement of the backward classes or the Scheduled Castes and Tribes were concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored. Considerations of national interest and the interests of the community and the society as a whole have already to be kept in mind.

Article 15 was amended and Art. 15 (4) was added in view of the judgment of this Court in the *State of Madras* v. *Smt. Champakam Dorairajan* and *The State of Madras* v. *C. R. Srinivasan* [1951] S. C. R. 525. Article 15 (4) is a proviso or an exception to Arts. 15 (1) and 29 (2). If an order is justified by the provisions of Art. 15 (4), its validity cannot be questioned on the ground that it violates Art. 15 (4) or Art. 29 (2).

It is true that the Constitution contemplates the appointment of a commission whose report and recommendations can be of assistance to the authorities concerned for taking adequate steps for the advancement of backward classes, but this does not mean that the appointment of the commission and the subsequent steps that would follow it are a condition precedent to any action being taken under Art. 15 (4). The special provisions contemplated under Art. 15 (4) can be made by the Union or the States by an executive order. It cannot be said that the President alone can make special provision for the advancement of the backward classes.

Article 15 (4) authorises the State to make special provision for the advancement of socially and educationally backward classes of citizens as distinguished from the Scheduled Castes and Scheduled Tribes. Some backward classes may, by presidential order, be included in Scheduled Castes and Tribes, and in that sense the backward classes for whose improvement provision is made in Art. 15 (4) are comparable to Scheduled Castes and Scheduled Tribes.

The backwardness under Art. 15 (4) must be social and educational. It is not either social or educational, but it is both social and educational. Though caste in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or dominant test. There are certain sections of Indian society such as Christians, Jains, Muslims, etc., who do not believe in caste system, and the test of caste does not apply to them. Moreover, social backwardness is in the ultimate analysis the result of poverty to a very large extent.

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The classes of citizens who are deplorably poor automatically become socially backward. Moreover, the occupation of citizens and the place of their habitation also result in social backwardness. The problem of determining who are socially backward classes, is undoubtedly very complex, but the classification of socially backward citizens on the basis of their castes alone is not permissible under Art. 15 (4).

In determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports is not adequate. It is doubtful if the test of the average of the student population in the last three high school classes is appropriate in determining educational backwardness. In any case, the State is not justified in including in the list of backward classes castes or communities whose average of student population per thousand is slightly above or very near or just below the State average. The legitimate view to take is that the classes of citizens whose average is well or substantially below the State average can be treated as educationally backward. It is not for this Court to lay down any hard and fast rule in this matter. It is the duty of the State to decide the matter in a manner which is consistent with the requirements of Art. 15 (4).

The division of backward classes into two categories of backward classes and more backward classes is not warranted by Art. 15 (4). Art. 15 (4) authorises special provision being made for the really backward classes but by introducing two categories, what is intended is to devise measures for all classes of citizens who are less advanced as compared to the most advanced classes in the State. That is not the scope of Art. 15 (4).

The object of making a special provision for the advancement of castes or communities is to carry out the Directive Principle enshrined in Art. 46. Unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of establishing social and economic equality cannot be attained. Article 15 (4) authorises the State to take adequate steps to achieve the object.

While making adequate reservation under Art. 16 (4), care should be taken not to provide for unreasonable, excessive or extravagant reservation because that would by eliminating general competition in a large field and by creating widespread dissatisfaction among the employees, materially affect their efficiency. Like the special provision improperly made under Art. 15 (4), reservation made under Art. 16 (4) beyond the permissible and legitimate limits is a fraud on the Constitution.

Ramakrishna Singh Ram Singh v. *State of Mysore*, A. I. R. 1960 Mysore 338, *S. A. Partha* v. *The State of Mysore*, A. I. R. 1961 Mysore 220, *The State of Madras* v. *Shrimathi Champakam Dorairajan*, [1951] S. C. R. 525 and *General Manager, Southern Railway* v. *Rangachari*, [1962] 2 S. C. R. 586, referred to

ORIGINAL JURISDICTION : Writ Petitions Nos. 90 to 112 of 1962.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

S. K. Venkataranga Iyengar and *R. Gopalakrishnan*, for the petitioners.

G. Ethirajulu Naidu, Advocate General of the State of Mysore, B. R. L. Iyengar, D. M. Chandrasekhar and *P. D. Menon*, for the Respondent No. 1.

R. Gopalakrishnan, for the Interveners.

1962. September 28. The Judgment of the Court was delivered by

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GAJENDRAGADKAR, J.—Since 1958 the State of Mysore has been endeavouring to make a special provision for the advancement of the socially and educationally backward classes of citizens in the State of Mysore under Article 15 (4) of the Constitution, and every time when an order is passed in that behalf, its validity has been challenged by writ proceedings. Four previous orders passed in that behalf were challenged by writ proceedings taken against the State under Art. 226 in the High Court of Mysore. The present petitions filed by the respective petitioners under Art. 32 dispute the validity of the last order passed by the State of Mysore on the July 31, 1962, under Art. 15 (4).

Out of the twenty-three petitioners, six had applied for admission to the Pre-professional Class in Medicine in the Medical Colleges affiliated either

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to the Mysore University or to the Karnatak University, and seventeen had applied for admission to the First Year of the 5 Year integrated course leading to the Degree of B. E. in the University of Mysore. According to the petitioners, but for the reservation made by the impugned order, they would have been entitled to the admission in the respective colleges for which they had applied. As a result of the reservation made by the said order, students who have secured less percentage of marks have been admitted, but not the petitioners. That, in brief, is the petitioners' grievance and they urge that the impugned order which has denied them the facility of admission in the respective colleges is void under Arts. 15 (1) and 29 (2) and should not be enforced against them. Accordingly, the petitioners pray that a writ of mandamus and/or any suitable writ or direction should be issued against respondent No. 1, the State of Mysore (hereinafter called the State), and the two Selection Committees which have been impleaded as respondents 2 & 3. The petitioners' case is that the impugned order which has been passed under Art. 15 (4) is not valid because the basis adopted by the order in specifying and enumerating the socially and educationally backward classes of citizens in the State is unintelligible and irrational, and the classification made on the said basis is inconsistent with and outside the provisions of Art. 15 (4). It is also urged by them that the extent of reservation prescribed by the said order is so unreasonable and extravagant that the order, in law, is not justified by Art. 15 (4) and, in substance, is a fraud on the power conferred by the said Article on the State.

These allegations are denied by the State and it is urged on its behalf that the classification made is both rational and intelligible and the reservation prescribed by the order is fully justified by Art. 15 (4). The contention that the order is a colourable exercise

of the State's power and amounts to a fraud on the Constitution is disputed.

As we have just indicated, the impugned order was preceded by four other orders and so, it is necessary to refer to the said orders in their sequence to understand the background of the dispute between the parties. On the 26th July, 1958, the State issued an order that all the communities, excepting the Brahmin community, fell within the definition of educationally and socially Backward Classes and Scheduled Castes and Tribes, and provided for the said communities and tribes reservation of 75% of seats in educational institutions. For the Scheduled Castes and the Scheduled Tribes, the percentage of reservation was 15% and 3% respectively. This percentage for the Scheduled Castes & Tribes has been maintained in all the subsequent orders. The order issued by the State on the 26th July, 1958, was challenged before the Mysore High Court and it appears that the State conceded before the High Court that there was a drafting error in the Government Order and so, it did not press its case that the said order was valid. In the result, the writ petitions filed to challenge the validity of the order succeeded and the impugned order was quashed.

In 1959, two separate orders were passed by the State on the 14th May and 22nd July respectively. By the first order, all communities, excepting Brahmins, Baniyas and Kayasts among the Hindus and Muslims, Christians and Jains, were classified as socially and educationally Backward Classes. It appears that 65% of the seats were reserved for these socially and educationally Backward Classes and Scheduled Castes and Tribes. These orders were challenged before the Mysore High Court in the case of *Ramakrishna Singh Ram Singh* v. *State of Mysore* (1). The High Court upheld the pleas raised by the petitioners and quashed the impugned

(1) A.I.R. 1960 Mysore 338.

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orders. In the result, the High Court directed that the applications made by the petitioners for admission to the respective colleges should be considered without reference to the said orders, but subject to the reservation for Scheduled Castes and Scheduled Tribes made therein.

The State then appointed a Committee called the Mysore Backward Classes Committee with Dr. R. Nagan Gowda as its Chairman, to investigate the problem and advise the Government as to the criteria which should be adopted in determining the educationally and socially Backward Classes, and the special provisions which should be made for their advancement. The Committee made an interim report, and in the light of the said report, the State passed an order on the 9th June, 1960 regulating admissions for that year into the professional and technical colleges. Broadly stated, the effect of this order was that 60% of the seats were left open for what may be conveniently described as the 'merit pool' available to candidates according to their merits. 40% were reserved for the 'reservation pool', 22% of which were reserved for the Backward Classes, 15% for the Scheduled Castes and 3% for the Scheduled Tribes. This order was also challenged before the Mysore High Court in *S. A. Partha* v. *The State of Mysore*(1). It appears that, on the whole, the High Court did not feel satisfied that the scheme of the special provision made by the impugned order was invalid, but it thought that the allotment of seats under the provisions of the said order in favour of the other Backward Classes in excess of 22% reserved for them otherwise than by open competition amounted to an unreasonable restraint on the fundamental right of other citizens and, therefore, was invalid. Having reached this decision, the High Court indicated the manner in which the reservation in favour of the Scheduled Castes and Scheduled Tribes and other Backward Classes should be worked out so as to

(1) A.I.R. 1961 Mysore 220.

avoid a successful challenge under Arts. 15 (1) and 29 (2).

Thereafter, the Nagan Gowda Committee made its report in 1961 and in the light of the said report and the recommendations made therein, the State proceeded to make an order under Art. 15 (4) on July 10, 1961. This Order begins with the observation that the Nagan Gowda Committee has come to the conclusion that in the present circumstances, the only practicable method of classifying the Backward Classes in the State is on the basis of castes and communities, and it has specified the criteria which should be adopted for determining the educational and social backwardness of the communities. The two criteria specified in the report are then set out. The order then expresses the State's concurrence with the proposal made by the Committee that the Backward Classes should be sub-divided into two categories—Backward and the More Backward, and it adopts the test laid down by the report in that behalf. This approach, according to the order, is realistic and practicable. On the question as to the communities which should be treated as backward, the State made some variations in the recommendations made by the Committee. It held that Lingayats, and Bhunts who formed part of Vokkaligas, should be treated as backward. In that connection, the State noticed the fact that the recommendation of the Committee in respect of the said two communities was not unanimous, and it observed that a large percentage of Lingayat population lives in rural areas and most of them are engaged in agriculture and manual labour and suffer from all the consequences of illiteracy and poverty. In regard to the Bhunts, the State thought that they could not be distinguished from the rest of the Vokkaligas. The order then adds that Satanis, Nayars and Zoroastrians whose average according to the educational test prescribed by the Committee was 7 per thousand of population (whereas that of Lingayats is

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7. 1) need not be treated as backward. The order then examines the question as to the percentage which should be reserved, and it rejects the Committee's recommendation of reservation of 68% all-told on the ground that such a large percentage of reservation would not be in the larger interests of the State. That is why, according to the order, 48% was fixed as the total reservation in favour of the Backward Classes, the Scheduled Castes and Scheduled Tribes together; that means, 30% was reserved for the Backward Classes. Annexure I to this order gives a list of 81 Classes and 135 More Backward Classes.

On July 31, 1962, the State passed the impugned order which supersedes all previous orders made by the State under Art. 15(4) for reservation of the seats in favour of the Scheduled Castes and Scheduled Tribes as well as the Backward Classes. Under this order, the Backward Classes are divided into two categories (1) Backward Classes and (2) More Backward Classes. The effect of this order is that it has fixed 50% as the quota for the reservation of seats for Other Backward Classes; 28% out of this is reserved for Backward Classes so-called and 22% for More Backward Classes. The reservation of 15% and 3% for the Scheduled Castes and Scheduled Tribes respectively continues to be the same. The result of this order is that 68% of the seats available for admission to the Engineering and Medical Colleges and to other technical institutions specified in the order passed on July 10, 1961 is reserved, and only 32% is available to the merit pool. In other words, the percentage of reservation to the extent of 68%, which, according to the order of July 10, 1961, would have been against the larger interests of the State, has, by the impugned order, been accepted. The petitioners contend that the classification made by this order is irrational and the reservation of 68% made by it is a fraud on Article 15 (4).

The problem raised for our decision by the present petitions involves the consideration of sociological, social and economic factors, and so, before dealing with the contentions raised by the parties before us, it is necessary to set out briefly the material which has been adduced before us. On January 29, 1953, the President appointed the Backward Classes Commission by virtue of the power conferred on him under Art. 340 (1) of the Constitution. This Commission made its report on March 30, 1955. The Commission was required "to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour, and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition." [Art. 340 (1)]. According to the Commission, the relevant factors to consider in classifying Backward Classes would be their traditional occupation or profession; the percentage of literacy or the general educational advancement made by them; the estimated population of the community, and the distribution of the various communities throughout the State or their concentration in certain areas. The Commission also thought that the social position which a community occupies in the caste hierarchy would also have to be considered, as well as its representation in Government service or in the industrial sphere. (p. 47). According to the Commission, the causes of educational backwardness amongst the educationally and socially backward communities were:—

1. Traditional apathy for education on account of social and environmental conditions or occupational handicaps.

2. Poverty and lack of educational institutions in rural areas.

3. Living in inaccessible areas.

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4. Lack of adequate educational aids, such as free studentships, scholarships and monetary grants.

5. Lack of residential hostel facilities.

6. Unemployment among the educated which acts as a damper on the desire of the members to educate their children; and

7. Defective educational system which does not train students for appropriate occupations and professions. (p. 107).

The Committee realised that, in substance, the problem of the Backward Classes is really the problem of Rural India (p. 55). It appears that having considered several criteria which may be relevant in determining which classes are backward, the Committee ultimately decided to treat the status of caste as an important factor in that behalf, and it is on that basis that it proceeded to make a list of Backward Communities which were specified in Volume II of the Report.

Dealing with the problem of university education, the Committee observed that the present rush of students to the Universities should be prevented in the larger interests of the country and that could be done only by training students in various occupations and professions at the secondary stage itself. But the Committee noticed that so long as University Degree qualification continues to be a pre-requisite to Government service, it was not easy to prevent the rush at the doors of the Universities, and so, the Committee proceeded to recommend that in all Science, Engineering, Medicine, Agriculture, Veterinary and other technical institutions, a reservation of 70% of the seats should be made for qualified students of Backward Classes till such time as accommodation can be provided for all students eligible for admission. (pp. 119 & 125).

That, in brief, is the nature of the meterial available from the Commission's Report.

It is, however, significant that the Chairman of the Commission who signed the Report, confesses to a feeling of grave dissatisfaction with the approach adopted in the Report in determining the question as to which communities could be regarded as backward under Art. 15(4). "My eyes were however opened," says the Chairman in his covering letter to the President, "to the dangers of suggesting remedies on caste basis when I discovered that it is going to have a most unhealthy effect on the Muslim and Christian sections of the nation," and he added that the said consciousness gave him a rude shock and drove him to the conclusion that the remedies suggested by the Commission were worse than the evil it was out to combat. According to the Chairman, "if we eschew the principle of caste, it would be possible to help the extremely poor and deserving from all communities. Care, however, being taken to give preference to those who come from the traditionally neglected social classes." Even though the Chairman thus expressed his distress in very strong language over the basis adopted by the Commission, he ultimately agreed to the proposal of the Commission for the reservation of seats for Backward Classes to the extent of 70 per cent.

The Report made by the Backward Classes Commission along with the Chairman's covering letter was considered by the Central Government in due course. The Central Government apparently did not feel satisfied about the approach adopted by the Commission in determining as to who should be treated as Backward Classes under Article 15(4). The Memorandum issued by the Government of India on the Report of the Commission points out that it cannot be denied that the caste system is the greatest hindrance in the way of our progress towards an egalitarian society, and the recognition of

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the specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of castes. Besides, the memorandum goes on to add that some of the tests applied by the Commission were more or less of an individual character, and even if they were accepted, they would encompass a large majority of the country's population. If the entire community, says the memorandum, barring a few exceptions, has thus to be regarded as backward, the really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance, nor would such dispensation fulfil the conditions laid down in Art. 340 of the Constitution. The memorandum, therefore, emphasised that action on a systematic and elaborate basis can be proceeded with only after the necessary positive tests and criteria have been laid down for determining which classes or sections are really entitled to get special relief and assistance. To that end, further investigation was obviously indicated. Even so, instructions were issued by the Central Government to the State Governments requesting them to render every possible assistance and to give all reasonable facilities to the people who come within the category of Backward Classes in accordance with their existing lists and also to such others who in their opinion deserve to be considered as socially and educationally backward in the existing circumstances.

On April 24, 1962, the Central Government wrote to the Secretary of Education Department of the Government of Mysore on the subject of reservation of seats under Article 15(4). In this communication it was observed that the Central Government had considered the said question and was of opinion that a uniform policy should be followed all over the country at least in non-Government institutions. It was then added that the All-India Council for Technical Education had recommended that the reservation for Scheduled Castes and Scheduled Tribes and other

backward communities may be up to 25% with marginal adjustments not exceeding 10% in exceptional cases. The Central Government, therefore, suggested that in all non-Government institutions in the State, the reservations under Art. 15 (4) should not in any case exceed 35%.

In this connection, it would be interesting to refer to the report made by the Commissioner for Scheduled Castes and Scheduled Tribes in 1959. In this Report, the Commissioner refers to the pilot survey made by the Dy. Registrar General of India at the request of the Government of India. This survey was made with the help of material collected at the time of 1951 Census with a view to find out whether occupations could be adopted as suitable basis for determining social and educational backwardness. A preliminary analysis of the data collected indicated that it would be possible to draw up a list of socially and educationally backward occupations on the basis of:—

> (a) any non-agricultural occupations in any State in India in which 50% or more of the persons belong to the Scheduled Castes or the Scheduled Tribes; or
>
> (b) any non-agricultural occupations in which literacy percentage of the persons depending thereon is less than 50% of the general literacy in the State.

In his Report, the Commissioner has adversely commented on the classification made by the State in the impugned order.

It now remains to consider the report made by the Nagan Gowda Committee appointed by the State. This Report proceeds on the basis that higher social status has generally been accorded on the basis of caste for centuries; and so, it takes the view that the low social position of any community is, therefore,

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mainly due to the caste system. According to the Report, there are ample reasons to conclude that social backwardness is based mainly on racial, tribal, caste and denominational differences, even though economic backwardness might have contributed to social backwardness. It would thus be clear that the Committee approached its problem of enumerating and classifying the socially and educationally backward communities on the basis that the social backwardness depends substantially on the caste to which the community belongs, though it recognised that economic condition may be a contributory factor. The classification made by the Committee and the enumeration of the backward communities which it adopted shows that the Committee virtually equated the classes with the castes. According to the Committee, the entire Lingayat community was socially forward, and that all sections of Vokkaligas, excluding Bhunts, were socially backward. With regard to the Muslims, the majority of the Committee agreed that the Muslim community as a whole should be classified as socially backward. The Committee further decided that amongst the backward communities two divisions should be made (i) the Backward and (ii) the More Backward. In making this distinction, the Committee applied one test. It enquired: "Was the standard of education in the community in question less than 50% of the State average? If it was, the community should be regarded as more backward; if it was not, the community should be regarded as backward." As to the extent of reservation in educational institutions, the Committee's recommendation was that 28% should be reserved for backward and 22% for more backward. In other words, 50% should be reserved for the whole group of backward communities besides 15% and 3% which had already been reserved for the Scheduled Castes and Scheduled Tribes respectively. That is how according to the Committee, 68% was carved out by reservation for the betterment of the Backward Classes and the Scheduled Castes and

Tribes. It is on the basis of these recommendations that the Government proceeded to make its impugned order.

Article 15(4) provides that 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. This Article was added by the Constitution (First Amendment) Act, 1951. The object of this amendment was to bring Articles 15 and 29 in line with Art. 16(4). It will be recalled that in the case of *The State of Madras* v. *Srimathi Champakam Dorairajan*(1) the validity of the Government order issued by the Madras Government fixing certain proportions in which students seeking for admissions to the Engineering and Medical Colleges in the State should be admitted, was challenged. The said Government Order was on the face of it a communal order fixing the admissions in the Stated. proportion by reference to the communities of the candidates. This order was struck down by the Madras High Court and the decision of the Madras High Court was confirmed by this Co.urt in appeal, on the ground that the fundamental r'ghts guaranteed by Articles 15(1) and 29(2) were not controlled by any exception, and that since there was no provision under Art. 15 corresponding to Art. 16(4), the impugned order could not be sustained. It was directly as a result of this decision that Art. 15 was amended and Art. 15(4) was added. Thus, there is no doubt that Art. 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2). In other words, if the impugned order is justified by the provisions of Art. 15(4), its validity cannot be impeached on the ground that it violates Art. 15(1) or Art. 29(2). The fundamental rights guaranteed by the said two provisions do not affect the validity of the special provision which it is permissible to make under Art. 15(4).

(1) [1951] S.C.R. 525.

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This position is not and cannot be in dispute. The petitioners contend that the impugned order is invalid because it is not justified by Art. 15(4).

The first argument which has been urged by Mr. Iyyangar on behalf of the petitioners is that it is not competent to the State to make an order under Art. 15(4) unless a Commission has been appointed under Art. 340 (1) and a copy of the report of the said Commission is laid before the House of Parliament under Art. 340(3). The argument is that Art. 340 provides for the appointment of a Commission to investigate the conditions of Backward Classes. The Commission so appointed is required to make a report recommending what steps should be taken to improve the conditions of the Backward Classes [Art. 340(2)]. When the Report is received by the President, the President is required to cause a copy of the Report together with the memorandum explaining the action taken thereon to be laid before each House of Parliament [Art. 340(3)]. It is the President who is to take action on the Report and then lay it before the House of Parliament and it is only the President who can, therefore, make special provision for the advancement of the Backward Classes. That is the effect of reading Articles 340 and 15(4) together. In our opinion, this contention is mis-conceived. It is true that the Constitution contemplated the appointment of a Commission whose report and recommendations, it was thought, would be of assistance to the authorities concerned to take adequate steps for the advancement of Backward Classes; but it would be erroneous to assume that the appointment of the Commission and the subsequent steps that were to follow it constituted a condition precedent to any action being taken under Art. 15(4). Besides, it would be noticed that Art. 340(1) provides that recommendations had to be made by the Commission as to the steps that should be taken by the union or any State, *inter alia*, to improve the condition of the

Backward Classes ; and that means that the recommendations were to be made which would be implemented in their discretion by the Union and the State Government and not by the President. Thus Art. 340(1) itself shows that it is the Union or the State that has to take action in pursuance of the recommendations made, and so, the argument that the President alone has to act in this matter cannot be accepted.

Then it is urged that even if special provision can be made by the State under Art. 15(4), the said provision must be made not by an executive order but by legislation. This argument is equally misconceived. Under Art. 12, the State includes the Government and the Legislature of each of the States, and so, it would be unreasonable to suggest that the State must necessarily mean the Legislature and not the Government. Besides, where the Constitution intended that a certain action should be taken by legislation and not by executive action, it has adopted suitable phraseology in that behalf. Article 16(3) and (5) are illustrations in point. Both the said sub-clauses of Art. 16, in terms, refer to the making of the law by the Parliament in respect of the matters covered by them. Similarly, Articles 341 (2) and 342 (2) expressly refer to a law being made by Parliament as therein contemplated. Therefore, when Art. 15(4) contemplates that the State can make the special provision in question, it is clear that the said provision can be made by an executive order.

Art. 15(4) authorises the State to make a special provision for the advancement of any socially and educationally backward classes of citizens, as distinguished from the Scheduled Castes and Scheduled Tribes. No doubt, special provision can be made for both categories of citizens, but in specifying the categories, the first category is distinguished from the second. Sub-clauses (24) and (25) of Art. 366 define Scheduled Castes and Scheduled Tribes respectively,

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but there is no clause defining socially and educationally backward classes of citizens, and so, in determining the question as to whether a particular provision has been validly made under Art. 15 (4) or not, the first question which falls to be determined is whether the State has validly determined who should be included in those Backward Classes. It seems fairly clear that the backward classes of citizens for whom special provision is authorised to be made are, by Art. 15(4) itself, treated as being similar to the Scheduled Castes and Scheduled Tribes. Scheduled Castes and Scheduled Tribes which have been defined were known to be backward and the Constitution-makers felt no doubt that special provision had to be made for their advancement. It was realised that in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Tribes and it was thought that some special provision ought to be made even for them. Article 341 provides for the issue of public notification specifying the castes, races or tribes which shall, for the purposes of this Constitution, be deemed to be Scheduled Castes either in the State or the Union territory as the case may be. Similarly, Art. 342 makes a provision for the issue of public notification in respect of Scheduled Tribes. Under Article 338 (3), it is provided that references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a Commission appointed under Art. 340(1), by order, specify and also to the Anglo-Indian community. It would thus be seen that this provision contemplates that some Backward Classes may by the Presidential order be included in Scheduled Castes and Tribes. That helps to bring out the point that the Backward Classes for whose improvement special provision is contemplated by Art. 15 (4) are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes

In considering the scope and extent of the expression "backward classes" under Art. 15(4), it is necessary to remember that the concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would he several layers or strata of backward classes and each one of them may claim to be included under Art. 15(4). This position is not disputed before us by the learned Advocate-General for the State. The backwardness under Art. 15(4) must be social and educational. It is not either social or educational, but it is both social and educational; and that takes us to the question as to how social and educational backwardness has to be determined.

Let us take the question of social backwardness first. By what test should it be decided whether a particular class is socially backward or not ? The group of citizens to whom Article 15(4) applies are described as 'classes of citizens', not as castes of citizens. A class, according to the dictionary meaning, shows division of society according to status, rank or caste. In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizen. Though according to sociologists and Vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later over-burdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority and to foster narrow caste loyalties. Therefore, in dealing with the question as to whether any class of citizens is socially

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

Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not ? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in toto from the operation of Art. 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the ultimate analysis the result of poverty, to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of

both caste and poverty in determining the backwardness of citizens.

The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Art. 15(4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way. That is the function of the State which purports to act under Art. 15(4). All that this Court is called upon to do in dealing with the present petitions is to decide whether the tests applied by the impugned order are valid under Art. 15(4). If it appears that the test applied by the order in that behalf is improper and invalid, then the classification of socially backward classes based on that test will have to be held to be inconsistent with the requirements of Art. 15(4).

What then is the test applied by the State in passing the impugned order? We have already seen that the Nagan Gowda Committee appointed by the State was inclined to treat the caste as almost the sole basis in determining the question about the social backwardness of any community. The Committee has no doubt incidentally referred to the general

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economic condition of the community as a contributory factor; but the manner in which it has enumerated the backward and more backward classes leaves no room for doubt that the predominant, if not the sole, test that weighed in their minds was the test of caste. When we consider the impugned order itself, the position becomes absolutely clear. The impugned order has adopted the earlier order of July 10, 1961, with some changes as to the quantum of reservation, and so, it is necessary to examine the earlier order in order to see what test was applied by the State in classifying the backward Classes. In its preamble, the order of July 10, 1961, clearly and unambiguously states that the Committee had come to the conclusion that in the present circumstances, the only practicable method of classifying the Backward Classes in the State is on the basis of castes and communities and the State Government accepts this test. In other words, on the order as it stands there can be no room for doubt that the classification of backward and more backward classes was made by the State Government only on the basis of their castes which basis was regarded as a practicable method. It is true that in support of the inclusion of the Lingayats amongst the Backward Classes the order refers to some other factors, but neither the Report of the Nagan Gowda Committee, nor the orders passed by the State Government on July 10, 1961, and July 31, 1962, afford any indication as to how any test other than that of the caste was applied in deciding the question. The learned Advocate-General has contended that the statement in the preamble of the order of July 10, 1961 should not be literally construed and he has argued that the words used in the relevant portion are inartistic and he has suggested that the order is not based on the sole basis of castes. We are not impressed by this argument. We have considered both the orders in the light of the Report and the recommendations made by the Nagan Gowda Committee and we are satisfied that the classification

of the socially backward classes of citizens made by the State proceeds on the only consideration of their castes without regard to the other factors which are undoubtedly relevant. If that be so, the social backwardness of the communities to whom the impugned order applies has been determined in a manner which is not permissible under Art. 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification.

The next question to consider is in regard to the educational backwardness of the classes of citizens. The Nagan Gowda Report and the impugned order proceed to deal with this question on the basis of the average of student population in the last three High School classes of all High Schools in the State in relation to a thousand citizens of that community. On the figures supplied to the Committee which admittedly are approximate and not fully accurate, the Committee came to the conclusion that the State average of student population in the last three High School classes of all High Schools in the State was 6·9 per thousand. The Committee decided that all Castes whose average was less than the State average of 6.9 per thousand should be regarded as backward communities, and it further held that if the average of any community was less than 50% of the State average, it should be regarded as constituting the more backward classes. It may be conceded that in determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports may not be adequate; but it is doubtful if the test of the average of student pepulation in the last three High School classes is appropriate in determining the educational backwardness. Having regard to the fact that the test is intended to determine who are educationally backward classes, it may not be necessary or proper to put the test as high as has been done by the Committee. But even assuming that the test applied is rational and permissible under Art. 15(4),

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the question still remains as to whether it would be legitimate to treat castes or communities which are just below the State average as educationally backward classes. If the State average is 6.9 per thousand, a community which satisfies the said test or is just below the said test cannot be regarded as backward. It is only communities which are well below the State average that can properly be regarded as educationally backward classes of citizens. Classes of citizens whose average of student population works below 50% of the State average are obviously educationally backward classes of citizens. Therefore, in our opinion, the State was not justified in including in the list of Backward Classes, castes or communities whose average of student population per thousand was slightly above, or very near, or just below the State average.

It will be recalled that the Nagan Gowda Committee had recommended that the Lingayats should not be treated as Backward Classes. The State has decided otherwise, and in doing so, the State has taken the view that the figures arrived at by the Committee should be corrected to the nearest integer as, in the nature of things, says the order of July 10, 1960, it is not possible to attain absolute mathematical precision in making such assessments. That is how the State average was raised from 6.9 to 7 per thousand. Even after increasing the State average to 7, the position with regard to Lingayat community was that its average of student population was 7.1 per thousand according to the Committee's calculations and according to the decision of the State 7, and yet the Lingayats as a community have been held to be an educationally backward class of citizens under the State order. This result has been achieved by adding ,1 to the State average and deducting ,1 from the Lingayats' average. The Ganigas whose average of student population is 7 per thousand are likewise included in the list of Backward Classes. If the State

average is 6.9 or 7, it would, we think, be manifestly erroneous to regard those communities as educationally backward whose student population ratio works at the same level as the State average.

In regard to the Muslims, the majority view in the Committee was that the Muslim community as a whole should be treated as socially backward. This conclusion is stated merely as a conclusion and no data or reasons are cited in support of it. The average of student population in respect of this community works at 5 per thousand and that, in our opinion, is not so below the State average that the community could be treated as educationally backward in the State of Mysore. Therefore, we are not satisfied that the State was justified in taking the view that communities or castes whose average of student population was the same as, or just below, the State average, should be treated as educationally backward classes of citizens. If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens whose average is well or substantially below the State average can be treated as educationally backward. On this point again, we do not propose to lay down any hard and fast rule; it is for the State to consider the matter and decide it in a manner which is consistent with the requirements of Art. 15 (4).

In this connection, it is necessary to add that the sub-classification made by the order between Backward Classes and More Backward Classes does not appear to be justified under Art. 15(4). Art. 15(4) authorises special provision being made for the really backward classes. In introducing two categories of Backward Classes, what the impugned order, in substance, purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced, compared to the most advanced classes in the State, and that, in our opinion, is not the scope

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of Art. 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and More Backward. The classification of the two categories, therefore, is not warranted by Art. 15(4).

That takes us to the question about the extent of the special provision which it would be competent to the State to make under Art. 15(4). Article 15(4) authorises the State to make any special provision for the advancement of the Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes. The learned Advocate-General contends that this Article must be read in the light of Art. 46, and he argues that Art. 15(4) has deliberately and wisely placed no limitation on the State in respect of the extent of special provision that it should make. Art. 46 which contains a directive principle, provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. There can be no doubt that the object of making a special provision for the advancement of the castes or communities, there specified, is to carry out the directive principle enshrined in Art. 46. It is obvious that unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of establishing social and economic equality will not be attained, and so, there can be no doubt that Art. 15(4) authorises the State to take adequate steps to achieve the object which it has in view. No one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the Backward Classes and the Scheduled Castes and

Scheduled Tribes unless the backwardness and inequality from which they suffer are immediately redressed. The learned Advocate-General, however, suggests that the absence of any limitation on the State's power to make an adequate special provision indicates that if the problem of backward classes of citizens and Scheduled Caste and Tribes in any given State is of such a magnitude that it requires the reservation of all seats in higher educational institutions, it would be open to the State to take that course. His argument is that the only test which can be applied is whether or not having regard to the problem which the State is called upon to meet, the provision made is reasonably adequate or not. Thus presented, the argument is, no doubt, prima facie attractive, and so, it must be carefully examined.

When Art. 15(4) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision ; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Art. 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Art. 15(4). It would be extremely unreasonable to assume that in enacting Art. 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored,

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In this connection, it is necessary to remember that the reservation made by the impugned order is in regard to admission in the seats of higher education in the State. It is well-known that as a result of the awakening caused by political freedom, all classes of citizens are showing a growing desire to give their children higher university education and so, the Universities are called upon to face the challenge of this growing demand. While it is necessary that the demand for higher education which is thus increasing from year to year must be adequately met and properly channelised, we cannot overlook the fact that in meeting that demand standards of higher education in Universities must not be lowered. The large demand for education may be met by starting larger number of educational institutions vocational schools and polytechnics. But it would be against the national interest to exclude from the portals of our Universities qualified and competent students on the ground that all the seats in the Universities are reserved for weaker elements in society. As has been observed by the University Education Commission, "he indeed must be blind who does not see that mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the universities" (p. 32). Therefore, in considering the question about the propriety of the reservation made by the impugned order, we cannot lose sight of the fact that the reservation is made in respect of higher university education. The demand for technicians, scientists, doctors, economists, engineers and experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by whole-sale reservation of seats in all Technical, Medical or Engineering colleges or institutions of that kind. Therefore, considerations of national interest and the interests of the community or society as a whole cannot be ignored in determining the question as to whether the special provision

contemplated by Art. 15(4) can be special provision which excludes the rest of the society altogether. In this connection, it would be relevant to mention that the University Education Commission which considered the problem of the assistance to backward communities, has observed that the percentage of reservation shall not exceed a third of the total number of seats, and it has added that the principle of reservation may be adopted for a period of ten years. (p. 53).

We have already noticed that the Central Government in its communication to the State has suggested that reservation for backward classes, Scheduled Castes and Scheduled Tribes may be up to 25% with marginal adjustments not exceeding 10% in exceptional cases.

The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society would not affect either the depth or efficiency of scholarship at all, and in support of this argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates from other Backward Classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency in the offices recruited by reservation (p. 135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is unduly liberalised it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special

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measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Art. 15(4) like reservation of posts and appointments contemplated by Art. 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the states and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Art. 15 (4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case. In this particular case it is remarkable that when the State issued its order on July 10, 1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between July 10, 1961, and July 31, 1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Art. 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance

between the several relevant considerations. Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Art. 15 (4).

The petitioners contend that having regard to the infirmities in the impugned order, action of the State in issuing the said order amounts to a fraud on the Constitutional power conferred on the State by Art. 15(4). This argument is well-founded, and must be upheld. When it is said about an executive action that it is a fraud on the Constitution, it does not necessarily mean that the action is actuated by malafides. An executive action which is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf is struck down as being *ultra vires* the State's authority. If, on the other hand, the executive action does not patently or overtly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, the said action is struck down as being a fraud on the relevant constitutional power. It is in this connection that courts often consider the substance of the matter and not its form and in ascertaining the substance of the matter, the appearance or the cloak, or the veil of the executive action is carefully scrutinized and if it appears that notwithstanding the appearance, the cloak or the veil of the executive action, in substance and in truth the constitutional power has been transgressed, the impugned action is struck down as a fraud on the Constitution. We have already noticed that the impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not permitted by Art. 15(4); and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Art. 15(4). Therefore, it follows that the impugned order is a fraud on the

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Constitutional power conferred on the State by Art. 15(4).

The learned Advocate-General has made an carnest and strong plea before us that we should not strike down the order, but should strike down only such portions of the order which appear to us to be unconstitutional on the doctrine of severability. He has urged that since 1938, the State has had to make five orders to deal with the problem of advancing the lot of the Backward Classes and the State is anxious that the implementation of the impugned order should not be completely prohibited or stopped. We do not see how it would be possible to sever the invalid provisions of the impugned order. If the categorisation of the Backward Classes is invalid, this Court cannot and would not attempt the task of enumerating the said categories; and if the percentage of reservation is improper and outside Art. 15(4), this Court would not attempt to lay down definitely and in an inflexible manner as to what would be the proper percentage to reserve. In this connection, it may be relevant to refer to one fact on which the petitioners have strongly relied. It is urged for them that the method adopted by the Government of Maharashtra in exercising its powers under Art. 15(4) is a proper method to adopt. It appears that the Maharashtra Government has decided to afford financial assistance, and make monetary grants to students seeking higher education where it is shown that the annual income of their families is below a prescribed minimum. The said scheme is not before us and we are not called upon to express any opinion on it. However, we may observe that if any State adopts such a measure, it may afford relief to and assist the advancement of the Backward Classes in the State, because backwardness, social and educational, is ultimately and primarily due to poverty. An attempt can also be made to start newer and more educational institutions, polytechnics, vocational institutions and even rural

Universities and thereby create more opportunities for higher education. This dual attack on the problem posed by the weakness of backward communities can claim to proceed on a rational, broad and scientific approach which is consistent with, and true to, the noble ideal of a secular welfare democratic State set up by the Constitution of this country. Such an approach can be supplemented, if necessary by providing special provision by way of reservation to aid the Backward classes and Scheduled castes and Tribes. It may well be that there may be other ways and means of achieving the same result. In our country where social and economic conditions differ from State to State, it would be idle to expect absolute uniformity of approach; but in taking executive action to implement the policy of Art. 15(4). It is necessary for the States to remember that the policy which is intended to be implemented is the policy which has been declared by Art. 46 and the preamble of the Constitution. It is for the attainment of social and economic justice that Art. 15(4) authorises the making of special provisions for the advancement of the communities there contemplated even if such provisions may be inconsistant with the fundamental rights guaranteed under Art. 15 or 29(2). The context, therefore, requires that the executive action taken by the State must be based on an objective approach, free from all extraneous pressures. The said action is intended to do social and economic justice and must be taken in a manner that justice is and should be done.

Whilst we are dealing with this question, it would be relevant to add that the provisions of Art. 15(4) are similar to those of Art. 16(4) which fell to be considered in the case of *The General Manager, Southern Railway* v. *Rangachari*(1). In that case, the majority decision of this Court held that the power of reservation which is conferred on the State under Art. 16(4) can be exercised by the State in a proper

(1) [1962] 2 S. C. R. 586.

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case not only by providing for reservation of appointments, but also by providing for reservation of selection posts. This conclusion was reached on the basis that it served to give effect to the intention of the Constitution-makers to make adequate safeguards for the advancement of Backward Classes and to secure their adequate representation in the Services. The judgment shows that the only point which was raised for the decision of this Court in that case was whether the reservation made was outside Art. 16(4) and that posed the bare question about the construction of Art. 16(4). The propriety, the reasonableness or the wisdom of the impugned order was not questioned because it was not the respondent's case that if the order was justified under Art. 16(4), it was a fraud on the Constitution. Even so, it was pointed out in the judgment that the efficiency of administration is of such a paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration; that, it was stated, was undoubtedly the effect of Art. 335. Therefore, what is true in regard to Art. 15(4) is equally true in regard to Art. 16(4). There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Art. 16(4), care would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Art. 15(4), reservation made under Art. 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. In this connection it is necessary to emphasise that Art. 15 (4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary.

In the result, we allow the writ petitions and direct that an appropriate writ or order or direction should be issued restraining the three respondents from giving effect to the impugned order in terms of the prayer made in clauses (i) and (ii) of paragraph 38 of the petitions. The petitioners would be entitled to their costs, one set of hearing fees.

Petitions allowed.

HEGGADE JANARDHAN SUBBARYE

v.

THE STATE OF MYSORE AND ANOTHER

(And connected petition)

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

College Admission—Reservation of seats for socially and educationally backward classes struck down—Reservation for Scheduled Castes and Tribes upheld—Constitution of India, Art. 15(4).

The petitioners challenged the validity of the orders issued by the State of Mysore under Art. 15(4) of the Constitution on July 10, 1961, and July 31, 1962. The petitioners contended that they had applied for admission to the Pre-Professional Class in Medicine in the Karnatak Medical College, Hubli and they would have secured admission to the said medical college but for the reservation directed to be made by the orders mentioned above. They contended that the above-mentioned orders were *ultra vires*. They prayed for an appropriate writ or order restraining the respondents from giving effect to those orders and requiring them to deal with their applications for admission on merits.

Held, that the petitioners were entitled to an appropriate writ or order as claimed by them and the respondents were restrained from giving effect to the above-mentioned orders.

M. R. Balaji v. *State of Mysore* [1963] Supp. 1 S.C.R. 439, followed.

The impugned orders were quashed only with reference to the additional reservation made in favour of the socially and