PARENTS ASSOCIATION AND ANR. A

v.

UNION OF INDIA AND ORS.

JANUARY 28, 2000

B

[DR. A.S. ANAND CJ, M. JAGANNADHA RAO AND V.N. KHARE, JJ.]

Constitution of India—Articles 14, 15, 16, 19(1)(g) and 21—Reservation of Quota—Andaman and Nicobar Island—Allotment of seats for higher education and public employment/appointment—Categorisation into (i) Tribals, (ii) Deputationists and Central Government employees, (iii) Pre-1942 Settlers, (iv) Post-1942 Settlers, (v) Settlers who put in 10 years of education in the Island, (vi) Merit candidates—Quota of category (v) reduced from 35% to 20% and that of category (iii) and (iv) together increased from35% to 50%—Writ petition filed against reduction of quota in category (v)—Held,validity of quota to be considered on the basis of Art. 14 and not Art. 15(4)—Pre and Post—1942 Settlers, socially and educationally backward and cannot be equated to settlers who had put in 10 years of education in the Island as they are voluntary migrants being socially and educationally advanced—Reduction of quota in category (v) and increase of quota in category (iii) and (iv) justified in view of historical background—Art. 14 or Art. 15(4) or any provision of the Constitution not violated—Central Government to review the position periodically. C D E

Constitution of India—Article 14—Reservation—No reservation based on population in a particular category can be carved out. F

Constitution of India—Article 14—Reservation—Provision for merit candidates—Unutilised quota to go to merit candidates—Held, normally reservation cannot exceed 50% of quota and rest must go to merit candidates.

G

The population of Andaman and Nicobar Islands consists of four categories; tribals, pre-1942 settlers, post-1942 settlers and settlers who have put in 10 years education there. The petitioners belong to the last category. Quotas were fixed from time to time in relation to allotment of seats for higher education and public employment/appointment. H

A The Central Government framed six categories viz. (i) tribals, (ii) Deputationists and Central Government employees (iii) Pre-1942 settlers (iv) Post-1942 settlers (v) Settlers who put in 10 years education in the island (vi) Merit candidates. The writ petitioners belong to category (v) and the impugned order fixed their quota at 20% and that of category B (iii) and (iv) together at 50%. This order, formulating a fresh quota system, was passed in accordance with the directions of the Calcutta High Court, which had quashed a previous order of the Lt. Governor which fixed the quota of the petitioners category at 35% and that of category (iii) and (iv) together at 35%.

C The petitioners in the present writ petitions contended that reduction of the quota from 35% to 20% for their category violated Articles 14 and 15 of the Constitution, that pre and post 1942 settlers could not be given 50% quota; and that no quota was provided for merit candidates.

D Dismissing the writ petition, this Court

HELD : 1. The pre-1942 settlers and post-1942 settlers belong to a separate category and have to be considered as backward socially and educationally next only in degree to the tribals. They struggled hard over several decades to make the Islands habitable and suffered torture during E the Japanese occupation in 1942-43. They, by no stretch of imagination, can be equated with the petitioners' category which consists of those who voluntarily migrated to the islands for business or other careers and are more advanced socially and educationally. In view of the historical background there was ample justification for the Central Government to F restore 50% quota for the pre and post 1942 settlers. [444-E-F; H]

2. Merely because the petitioners are more in number, they cannot claim a larger percentage of reservation. No such reservation based on population can be carved out, even if the petitioner's category consists of 57% of the student population. It is not possible to give them a higher G quota compared to the pre-1942 and post-1942 settlers who were identified as backward both socially and economically. [445-E]

Indira Sawhney v. *Union of India,* [1992] Suppl. 3 SCC 217, relied on.

3.1. The Central Government considered the facts revealed in the H survey, submissions of all groups and the historical basis of the reserva-

tion of 50% in favour of the pre-1942 and post-1942 settlers. It kept in mind that the petitioners are affluent and more advanced-educationally and socially. The impugned order does not suffer from any irrationality as all relevant facts have been considered and no irrelevant facts were taken into consideration. [445-F-G]

3.2. The reduction of quota for the petitioners from 35% to 20% was perfectly justified and that the prescription of 50% for the pre and post 1942 settlers was equally justified. There was no violation of Articles 14 or 15(4) or any other provision of the Constitution. [445-H]

4.1. Normally reserved categories cannot exceed 50% of the quota and the rest must go to merit candidates, but on the peculiar facts of the case, the present classification and quota does not offend the said principle. [446-C]

4.2. The impugned order specifically provided that the unutilised quota from all other categories would go to merit candidates. Adequate provision has been made in favour of merit candidates. [446-E]

5. The Central Government has to review the position periodically to find out if the members of the reserved categories are able to get selection in sufficient numbers and also whether a reasonable percentage is going to merit candidates. [446-H]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 418 of 1996.

Under Article 32 of the Constitution of India.

K. Sukumaran, S.B. Sanyal, P.P. Malhotra, M.C. Bhandare, Dushyant Dave, R.K. Jain, Soli J. Sorabjee, A.K. Srivastava, Tapas Ray, Ms. Sangeeta Kumar, Ashwani Garg, S.C. Ghosh, Ranjan Mukherjee, Satish Vig, S. Wasim A. Quadri, P. Parmeshwaran, Ms. C.K. Sucharita, D.S. Mehra, Vijay Kumar, Ms. Sushma Suri, Ms. Shyamali Ganguli, S.K. Das, B.K. Ghosh, Balai Roy and M.S. Ganesh for the appearing parties.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. This writ petition is filed by the Parents' Association of Ten years Students, Andaman and Nicobar Islands (Port

A Blair) (hereinafter called Ten Years Category) and one P. Pratapan, Port Blair. The respondents ar the Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi and the Secretary, Minister of Human Resources and Development (respondents 1(a) and 1(b), the Lt. Governor (respondent 3) and the Secretary (Education) (Respondent 4) B of the Andman and Nicobar Islands, Port Blair.

The petitioners filed the above Writ Petition (under order 1, Rule 8, C.P.C.), seeking to set aside the proceedings of the Union of India, Ministry of Home Affairs dated 14.2.84, 4.9.91, 30.5.96 as being violative of Articles 14, 15, 16, 19(1)(g) and 21 of the Constitution of India. Directions C were sought for framing Consolidated Regulations under Article 240(1)(a) of the Constitution of India in relation to allotment of seats for higher educational courses (professional and technical) and for public employment/appointment for all permanent residents of the Islands, in conformity with Articles 14, 15 and 16 of the Constitution of India, to redefine 'local' and 'permanent resident' by removing all discrimination on the basis of D race, descent, place of birth etc. to divide the entire community of school leaving students/permanent resident into two categories (i) Tribals and (ii) others subject to the conditions that they have studied for ten years in the Island and passed the qualifying examination from schools in the Island and not to give executive instructions.

E

The facts of the case are as follows :

In the Andaman and Nicobar Islands, there are several categories of persons residing - (i) tribals (ii) those who settled there prior to 1942 (iii) others who settled after 1942 under rehabilitation schemes and (iv) those F who have gone to the island for business or professional purposes and who have put in 10 years education. The *writ petitioners* belong to the last of these categories. As to who are the pre 1942 settlers and post 1942 settlers we shall explain later.

G Quotas were fixed for the above said categories of persons under various orders, from time to time, for purpose of admission to Engineering/Medical etc. seats. These seats are reserved in various colleges in the Indian mainland from time to time.

We may make it clear, even at the outset, that the 'quotas' fixed in H the various proceedings, except the quota fixed for Tribals, do not fall

under Article 15(4) at all. The question of the validity of the quotas for the Central Government servants, the pre-1942 and post 1942 settlers and the 10 year old is to be considered on the basis of Article 14 and not under Article 15(4).

The impugned order of the Central Government is dated 30.5.96 and refers to the quotas fixed from time to time, namely, by the notifications of the Ministry of Home Affairs dated 7.3.81, 4.9.91, then to criteria fixed by the Supreme Court's interim order dated 6.8.1993, and finally to the criteria fixed by the Andaman and Nicobar Administration on 23.4.94 and by the Lt. Governor on 6.8.94. the order of the Lt. Governor dated 6.8.94 was quashed by the Calcutta High Court. Then the Central Government passed the order dated 30.5.96 and formulated fresh quota system for various categories and the said quotas are now impugned in this writ petition. The relevant categories have been classified in the impugned order as follows :

(i) Tribals

(ii) Deputationists and Central Government Employees

(iii) Pre 1942 - Settlers

(iv) Post 1942 - Settlers under re-settlement Schemes

(v) Other locals with 10 years education in Islands (The writ petitioners belong to this category and this category is classified as category (iv) in the impugned notification dated 30.5.96

(vi) Merit candidates.

and various percentages of quotas have been fixed. However, no specific quota has been fixed for the 'merit candidates'.

It will be advantageous to refer to the quotas fixed from time to time in the earlier orders of the Central Government, and in the interim order of the Supreme Court dated 6.8.93 and by the Lt. Governor of the Islands and the quotas now fixed in the present impugned order dated 30.5.96 of the Central Government. They are as follows :

Category of residents		Criteria approved by MHA on 7.3.81	Criteria approved by MHA on 4.9.91	Criteria as per Supreme Court's order dt. 6.8.93	Criteria as per order of A&N admn. dated 25.4.94	Criteria as per order of A&N admn. dated 6.8.94	Criteria fixed by MHA on 30.5.96
		(1)	(2)	(3)	(4)	(5)	(6)
I.	Tribals	20%	20%	20%	20%	20%	20%
II.	Deputationists and Central Govt. Employees	10%	10%	50% (For category II	50% (For category II	10%	10%
III.	Pre 1942 settlers	50% (for category III and IV)	50% (For category III and IV)	III IV and V)	III IV and V)	17.50% (For category III)	50% (For category III and IV)
IV.	Settlers in resettlement schemes after 1942					17.50% for category IV	
V.	Other locals with 10 yrs. education in Island	20% for category V	20% for category V			35% for category V	20% for category V
VI.	Merit	.....	.....	30%	30%	.....	.....
Total		100%	100%	100%	100%	100%	100%

* The definition of Central Government Employees changed to include only central Government employees with transfer liability to serve outside the UT Administration. The Central Government employees having no transfer liability to serve outside the UT Admn. were included in Category V.

** The Supreme Court's order stated that "50% shall be distributed proportionately in accordance with the breakup indicated in categories 2, 3 and 4 in the order dated 4th september, 1991".

*** Included deputationists, Central Government Employees and others who were not in any other category.

It will be seen from the above tabular statement that in various proceedings, the local Tribals of the Islands (Category I) have been given a quota of 20% seats. In the proceedings dated 7.3.81, 4.9.96 of the Central Government and the proceedings of the Lt. Governor dated 6.8.94 and in the impugned order of the Central Government dated 30.5.96, 10% seats are reserved for the deputationists and Central Government Employees. There is no dispute before us regarding these quotas.

The writ petitioners are, as already stated, the "other locals with 10 years education in the Island" (category v). In the earlier orders of the Central Government dated 7.3.81 and 4.9.91, this category was given a quota of 20% of the seats but the said percentage was increased to 35% and the quota for the pre-1942 and post 1942 settlers was reduced by the Lt. Governor in his orders dated 6.8.94. That was quashed by the Calcutta High Court. After a fresh survey, the Central Government has now passed the impugned order on 30.5.96 and reduced the 35% quota of the petitioners' category to 20% and brought back the 50% quota for the pre-1942 and post 1942 settlers. This is the cause of action for the writ petition.

The learned senior counsel for the petitioners Sri K. Sukumaran contended that the reduction of the quota for the petitioners category from 35% to 20% was violative of Articles 14 and 15 of the Constitution of India, that the pre and post 1942 settlers could not have been given 50% quota and that in the impugned order of the central Government dated 30.5.96, no provision was made for merit quota and this was not permissible.

On the other hand, learned senior counsel for the Central Government Sri P.P. Malhotra and the other lerned senior counsel Sri S.B. Sanyal and Sri M.C. Bhandare supported the above order of the Central Government.

The following points arise for consideration :

(1) whether the reduction of quota for the "locals with 10 years education" from 35% to 20% is illegal or otherwise vitiated?

(2) Whether the provisions for 50% quota for the pre and post 1942 settlers suffers from any legal infirmity?

A (3) whether the impugned order has not made any provision for merit candidates?

Point 1 and 2 :

We shall initially refer to the various orders passed by the Central B Government from time to time and to the various orders of the Calcutta High Court passed earlier.

On 7.3.81, the Central Government made certain categorisation and fixed certain quotas as shown in the Table. The same were revised again C on 29.2.88 by the Central Government (not shown in the Table). The said order dated 29.2.88 of the Central Government was challenged in CR No. 5321(W)/1988 in the Calcutta High Court. M.K. Mukherjee, J. (as he then was) in his judgmnet dated 18.7.90 while upholding the policy of the Central Government in fixing quotas for students of different categories including the 'local born' in view of their economic and educational back- D wardness, however observed that "while considering the case of those with 10 years education in the Islands, there was no justification in excluding their students who may have also a minimum of 10 years continuous education in the Island and passed the school examination". It was observed that the definition of 'local candidate' contained in the order dated E 14.2.84 should be amended so as to include such students.

Thereafter, Ms. Ruma Pal, J. in C.O.9115(W) of 1991 passed certain orders on 11.6.91 but recalled the same on 9.8.91. The learned Judge obseved that it was not clear whether the Central Government had passed fresh orders in the light of the judgment of M.K. Mukherjee, J (as he then F was).

It was at, that stage that the Central Government passed orders dated 4.9.91 fixing various quotas (referred to in the Tabular Statement). These quotas were modified by the Lt. Governor on 25.4.84 by reducing the percentage fixed for the pre-1942 settlers and post-1942 settlers (under G schemes). This order dated 25.4.84 was quashed by Tarun Chatterjee, J. in C.O. 78(w) of 1994 dated 27.7.94 on the ground of violation of principles of natural justice, inasmuch as the pre and post 1942 settlers were not heard before reducing their quota. Thereafter the Lt. Governor passed a fresh order dated 6.8.94 after hearing the affected parties. The said order H was again challenged in CO 11514(W) of 1995 by the 'Local Born

Association'. Samaresh Banerjee, J. in an elaborate judgment dated 31.1.96 after referring to the history of the litigation, quashed the said order of the Lt. Governor dated 6.8.94, giving various reasons. It will be necessary to briefly refer to the said reasons.

The learned Judge while stating that there was no need to go into the question of the jurisdiction of the Lt. Governor to modify the orders of the Central Government dated 4.9.91, observed that it was obvious that Lt. Governor's orders dated 6.8.94 were '*adhoc*' or tentative and were meant only for the then "current" academic year. It was held that the Lt. Governor's orders making a tentative decision was contrary to the direction of Tarun Chatterjee, J. that a final order was to be passed. It was also observed that even the interim arrangement has been made on incomplete data". This was clear from the fact that the Lt. Governor had himself held that there was no upto date and that data had to be gathered by a fresh survey. If that was so, the Lt. Governor had no material even to make a tentative decision. The Lt. Governor had "not come to any finding in the order as to how the quota or percentage of reservation - which was lastly revised in the year 1991 - cannot be said to be equitable". The Lt. Governor had not stated why the earlier order of the Central Government of the year 1991 was inequitable. The Lt Governor "has not at all applied his mind to the represenatives of the present petitioners against the reduction of their quota". The "entire exercise which has been made by the Lt. Governor by giving hearing to different parties pursuant to the direction of Tarun Chatterjee, J. was a futility as no final decision has at all been taken based on relevant materials". On the above grounds, Samaresh Banerjee, J. quashed the Lt. governor's orders dated 6.8.94 and remitted the matter to the Central Government. Thereafter, the present order dated 30.5.96 was passed .

We shall now refer to the reasons upon which the present decision of the Central Government dated 30.5.96 is based.

The present order takes into account the findings of the survey regarding 'student population', a factor which was treated as relevant in the judgments of the Calcutta High Court rendered by M.K. Mukherjee, J. (as he then was) and by Tarun Chatterjee, J. as stated earlier. The facts revealed from the Survey of student were set out in the order as follows :

	Category	No. of students	Precentage of total no. of students
I.	Tribals	5850	7.61
II.	Central Government Employees, deputationists and others not covered in any category but completed two years of education from schools in the territory	4257	5.54
III.	Pre 1942 settlers	7408	9.64
IV.	Settlers in re-settlement schemes after 1942	14796	19.25
V.	Other locals with 10 years education in islands	43931	57.15
VI	Others having education in islands for less than two year	628	0.82

The Central Government then observed that there was no dispute between the parties in regard to the 20% quota for tribals. The Central Government then referred to the contentions of (i) The Andaman and Nicobar Administration (ii) Local Born Associations (iii) the Bengal Association (iv) Parent Association, 10 years category (writ petitioners) and (v) the Harbour workers Engineers Association. The Central Government observed :

> "From the above averments, the following points emerge :
> A & N Islands are an extremely backward area because of there remoteness and under development. This is a total lack of higher education facilities in the Islands and hence the students from there have to depend on the reservations provided in the mainland. Therefore, the system of reservations *has to continues for all permanent residents* of the Islands."

Then the Central Government observed that, no doubt, no investigation had been carried out under Article 340 by appointing a Commission

to investigate into the conditions of backward classes in the island, socially and educationally but the fact remained that there was much backwardness among the permanent residents of the Island. The order then stated :

> "As a Welfare State, we must ensure that orders issued in regard to reservation cover the entire population of the island territory which does not have the requisite facilities for higher education."

It then referred to the contention of the A & N Administration pleading for a specific reservation of 30% for general merit, then to the contention of the Local Born Association that 20% be reserved for tribals and 50% for the pre & post 1942 settlers and 30% for merit. It also referred to the plea of (writ petitioners), the "Parents Association of Ten years Students" that except reservation for tribals other reservations would be bad and also to the fact that in the interim order of the Supreme Court dated 6.8.93, 30% were reserved for merit. After confirming 20% quota for tribals, the Central Government stated that though 20% of seats were earmarked for tribals as per the 1981 and 1991 orders, the actual utilisation of the said quota was low. For example, the student population of tribals was 7.61% (Class I to XI) but their representation in class XII was only 2.77%. The position during 1992 to 1996 was no different for which the figures were as follows :

Year	Total No. of seats available from A&N Admn.	No. of seats actually utilised by tribals	Percentage of seats utilised by Tribals
1	2	3	4
1992-93	196	7	3.5
1993-94	190	5	2.63
1994-95	209	8	3.82
1995-96	188	8	4.25

(Col. 4 shows that the 20% quota was never utilised by the tribals)

The Central Government stated that though "60 B.E. seats in 1993-94 and 52 B.E. seats in 1994-95 were available, no tribal candidate was actually awarded any B.E. seat. But, even so, the Government of India now thought it fit to maintain 20% quota for tribals, and directed that the unfilled quota may go to the merit candidates. The order stated as follows :

A "Subject to the condition that the seats which are not actually utilised by Tribals will be diverted to *general category* open to all the residents of the A&N Islands, irrespective of any classification and *will be filled up purely on basis of merit.*"

The Central Government then observed that the pre-1942 settlers and the
B post 1942 settlers who were "brought" to the islands under various colonisation and rehabilitation schemes had a special case, as they *passed through times when the territory was extremely backward, undeveloped and inhospitable* and, as such, they deserved a different treatment more favourable than others who had migrated to the island much later and of
C their own accord. On that basis, the Central Government restored the 50% quota for pre 1942 and post 1942 settlers above mentioned. However, in order to ensure that benefits do accrue to the targeted population, the Central Government directed further sub- quotas as follows :

(1) pre 1942 settlers 1/3rd
D (2) other settlers 1/3rd

The remaining 1/3 was to go to the two groups but on 'combined merit', with a condition that

E "unutilised seats, if any, in this category, will go to the general merit quota."

The Central government retained the 10% quota for Government servants and deputationists, subject to the condition that

F "the candidates in this category should have studied the last two years in the islands and passed the qualifying examination, from a school in the islands."

and

G "unutilised seats, if any, in this category will go to the general merit quota."

After thus ensuring the 20% quota for tribals, and 50% for the pre and post 1942 settlers and 10% government employees (deputationists and the unutilised seats for 'merit'), the Central Government dealt with the
H *petitioner's category* i.e. Locals with 10 years education and said that their

quota should not be abolished as contended by the other groups nor increased from 20% and that it should remain at 20%. It was also stated that :

> "unutilised seats in this category will be diverted to the general merit quota."

The Government did not find it appropriate to club any section of the Central Government employees with transfer liability with this category of 'other locals'. Then the Government of India concluded as follows :

> "In short, the allocation of seats to various categories with effect from the 1996 academic sessions will be as under :
>
> *Category I :*
>
> Tribals 20%
>
> *Category II :*
>
> Deputationists and Central Govt. employees with transfer liability to serve outside the Union Territory, provided the candidates in this category have studied the last two years in the island and passed the qualifying examination from a school in the islands. 10%
>
> *Category III:*
>
> Settlers who were settled prior to 1942 and those who were settled under various rehabilitation schemes introduced after reoccupation of the Islands. 50%
>
> The seats in this category will be allocated as under :
>
> (a) Pre-1942 Settlers 1/3rd
> (b) Other Settlers 1/3rd
> (c) Seats to be allocated on the basis of combined merit of (a) & (b) above 1/3rd
>
> *Category IV :*

A	Other locals who do not fall under category I, II or III above and such Central Government Employees having no transfer liability to serve outside the Union territory, provided all have had 10 years education in the islands	20%
B	*Category V :*	
C	General merit quota open to al the residents of the A&N Islands irrespective of any classification. This will be subject to the condition that the candidates in this category have studied the last two years in the islands and passed the qualifying examination from a shcool in the Islands.	Unutilised Seats of Categories I, II, III and IV above

We shall now refer to the facts mentioned in the counter affidavits to justify the restoration of 50% quota for the pre-1942 and post 1942 D settlers and the reduction of the quota for the petitioners' category.

In the counter affidavit filed on behalf of the Central Government in this Court, it was stated that no other category had raised any objection against the quotas fixed in the order dated 30.5.96 except the petitoner's category. In fact, the other categories for whom quotas were fixed were not E even impleaded by the petitioners in this writ petition. (The "natural born" category got impleaded as respondent No. 5 on their own). The categories referred to in the impugned order dated 30.5.96 are, it is stated, identifiable in the islands and are not the creation of the government's instructions. No provision of the Constitution has been violated. The reservation is based on the policy of the Government of India. The Government "may from time F to time modify or vary the conditions regarding selection for admission if such modifications or variations become necessary to achieve the purpose of uplifting the socially and educationally backward candidates". Quotas can be fixed by executive instructions also. It is not correct to state that 100% seats have been reserved and nothing is left for merit. The pre 1942 G settlers and the settlers brought to the island under various colonisation and rehabilitation schemes have a *special case* as they have passed through *difficult times* when the territory was extremely backward, undeveloped and inhospitable. They are entitled to more favourable treatment. The decision is based on '*historical background*' and a distinction based on 'historical background' is valid. The petitioners' category is different as it consists of H those who "subsequently migrated to islands *on their own volition and sweet*

will, finding migration more beneficial and lucrative". The quotas are fixed for the 'students' in view of the express directions of the Calcutta High Court. There is no comparison between the pre-1942 and post 1942 settlers on the one hand and the petitioners on the other hand. The 10% quota for Deputationists and Central Government employees with transfer liability is also valid as it encourages people to serve in the islands. The pre 1942 settlers suffered during the 2nd World War due to Japanese occupation while the post 1942 settlers were settled by government under schemes and they faced tremendous hardships. The petitioners have migrated much later on their own volition and are "socially, educationally and economically *more advanced* and do not share the same past which the pre 1942 settlers had faced. In fact, most of the petitioners' category have an undisturbed and settled establishment at various places in the mainland. The petitioners represent the *affluent* classes who migrated at their sweet-will for exploring lucrative business opportunities. They cannot be equated with pre or post 1942 settlers."

In the counter affidavit filed by the 'Local-Born Association', a brief history of the islands is given. Reference is made to the penal settlement of Indians in 1825 and in 1832 upto 1930 and to the criminal convicts settled there by the Britishers. Several sepoys who participated in the 1857 rebellion were also sent to Andamans. Other freedom fighters were sent in 1905 and 1920. These persons were forced to do labour for making roads, buildings, removing forests etc. and to make the island habitable. Those who were released were not allowed to go back to the mainland but were allowed to bring their families or marry female ex-convicts. The Japanese occupied the islands on 2.3.43 and were there upto 18.10.45. These Indians were tortured by the Japanese. The language, culture, life style, economic strength and education of these were different. These are the 'local borns'. Then there were the post 1942 settlers brought under special schemes. On the other hand, those who migrated in 1950 or thereafter maintained their contact with the mainland. The members of the 1st petitioner's association who are central government employees and are parties of the 10 years educated category - have claimed their 'Home Town' in the main island and are permitted to visit the mainland every year at government expense. It was further averred that, under this quota, the ten year educated group who get higher education in the mainland, do not come back to work in the Islands. It is stated :

"...the children of the writ petitioner no. 1 after availaing the benefit

A of reserved seats meant for this backward area, upon completing their education, *do not comeback for serving the island*, instead *and settle down in the mainland*. They never come back even though they sign the bonds to serve the islands for a period of 3 years."

The claim of the writ petitioners that the 10 year category students popula-
B tion constituted 58% of the total student population is denied as no authentic census has been conducted. In any event, population is not the criteria for allotment of seats by way of special provision. The existing definition of 'locals' is to the detriment of the tribals and to the pre-1942 settlers and any further dilution therof is not permissible. Further, the said
C definition concerns employment and not education.

A rejoinder has been filed contending that the pre and post 1942 settlers do not stand on a separate footing and that 57% of student population belonging to the petitioner's category cannot have only 20% quota.

D

From the above facts as stated in the affidavits filed by the parties, it is clear that the pre-1942 settlers and the post 1942 settlers who were settled in the Islands belong to a separate category and have to be considered as backward, socially and educationally, next only in degree to the
E Triabals. These categories were compulsorily inducted in the Island and struggled hard over several decades to make the Islands habitable. They had no educational opportunities over a long period and were forced to do hard labour for laying roads, constructing buildings, removing forests etc. These included penal settlers, sepoys of 1857 movement, later freedom fighters etc. They were not allowed to go to the mainland. The 1942 settlers
F suffered torture during the Japanese occupation in 1942-43. The post 1942 settlers were brought to the Island under specific schemes of rehabilitation etc. These two categories, by no stretch of imagination, can be equated with the petitioner's category which consists of those who voluntarily migrated to the island for business or other careers. These persons were
G definitely more advanced socially and educationally. In fact, it is the respondent's contention that some of them show their 'home-town' in the mainland and their children, once they get into the reservation quota, do not come back to the island for settling there.

We, therefore, agree that in view of the historical background there
H was ample justification for the Central Government, in their orders dated

30.5.96, to restore the 50% quota for the pre and post 1942 settlers and in not reducing the same to 17.50% plus 17.50% as done by the Lt. Governor in his order dated 6.8.94. A

A question has been raised by the petitioners that according to the survey, more than 50% of the students belong to the 10 year educated category and that therefore the fixation of a quota of 20% to the petitioners as against a student population over 50% was bad. B

In our view, this contention is not legally tenable. It was pointed out in *Indira Sawhney* v. *Union of India*, [1992] Suppl. 3 SCC 217, that reservations are not to be made on the basis of population of a particular category. Reservation for education is to be made under Article 15(4) keeping in view the social and educational backwardness and the need to provide adequate educational opportunities. Merely because, the 'ten year education category' like the petitioners are more in number, they cannot claim a larger percentage of reservation on that basis. Jeevan Reddy, J. pointed out (see p. 734 SCC, para 807), that the principle of 'proportionate representation' was accepted in the Constitution only for purposes of Articles 330 and 332 and that too for a limited period. Those articles spoke of reservation in the Lok Sabha and State Legislatures. No such reservation based on population can, therefore, be carved out for the petitioners. C D

Even if the petitioner's category of 10 year educated persons consist of 57% of the student population, it is not possible to give them a higher quota as compared to the pre-1942 and post 1942 settlers who were identified as backward, both socially and economically. E

Further, it is clear that the Central Government in its orders has considered the facts revealed in the survey, it has considered the submissions of all the groups and the historical basis of the reservation of 50% in favour of the pre-1942 and post 1942 settlers. It has kept in mind that the petitioners are afffluent and are more advanced educationally and socially. In our view, the impugned order does not suffer from any irrationality. It cannot be said that any relevant facts were not considered or any irrelevant facts were taken into consideration. For the aforesaid reasons, we hold on *Point 1* that the reduction of the quota for the petitioners from 35% to 20% was perfectly justified and on *Point 2* that the prescription of 50% for the pre and post 1942 settlers was equally justified. There was no violation of Articles 14 or Article 15(4) or any other provision of the Constitution. F G H

A Points 1 and 2 are decided accordingly against the petitioners.

Point 3 :

This point relates to the contention that no specific quota has been fixed for candidates competing on merit basis.

B

It is true that normally it is expected that reserved categories cannot exceed 50% of the quota as decided in various decisions of this Court and the rest must go to merit candidates. But on the peculiar facts of the case relating to the Andaman and Nicobar Islands, the present classification and quota cannot be said to be offending the said principle. The impugned C order dated 30.5.96 refers to the statistics from 1992-93 and shows that though 20% quota was reserved for the Tribals, the said quota was never fully utilised. Therefore, it was specifically provided that the *unutilised* quota of the 20% for tribals would go to merit candidates. A provision was made in respect of the merit candidates amongst the pre-1942 and post D 1942 categories by providing a sub-classification in which 1/3 of 50% would go to such merit candidates and *unutilised* quota was to go to the general merit candidates. Even in respect of the 10% quota for Central Government employees and deputationists and the 20% quota for the Ten year education group, it was directed that the *unutilised* quota would go to the E merit candidates. Having regard to rather special facts obtaining in the Islands, we are of the view that it cannot be said that adequate provision has not been made in favour of merit candidates.

The learned senior counsel for the petitioners sought to contend, on the basis of certain figures which were not brought on record, that in recent F years the special quotas were not left unutilised. This contention was countered by Sri S.B. Sanyal, learned senior counsel for some of the respondents stating that the seats of the reserved categories remain unutilised even now. As there is no authentic data before us on the question, we cannot accept the data put forward by the learned senior counsel for G the petitioners. We, therefore, hold that it cannot be said that adequate provision has not been made to the merit candidates. Point 3 is decided against the petitioners.

But, before parting with the case, we may state that the Government of India has to review the position periodically to find out if the members H of the reserved categories are able to get selection in sufficient numbers

and also whether a reasonable percentage is going to merit candidates. It may be that in the peculiar facts governing the Andaman and Nicobar Islands the quota for merit candidates may not necessarily go upto 50%. Such exceptional situations have been pointed out even in *Indira Sawhney's* case (see p.735 of SCC, para 810). It was there observed :

> "While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas, the population inhabiting those areas, might, on account of their bring out of the mainstream of national life and in view of conditions peculiar to and characteristic to them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

The last review having been made in 1996, the Central Government may consider a review at least by 2006. Any review has to be made after obtaining authentic data in regard to the extent of utilisation of the quotas fixed under the 30.5.95 order for the Tribals and for the pre-1942 and post 1942 settlers.

Subject to the above observations, the writ petition is dismissed. There will be no order as to costs.

A.Q. Petition dismissed.