RIENZIE PERERA AND ANOTHER
v.
UNIVERSITY GRANTS COMMISSION AND ANOTHER

SUPREME COURT
ISMAIL J., WEERARATNE J. AND SHARVANANDA J.
S.C. APPLICATION NO; 57/1980.
JULY 16, 17, 18, 21 AND 22, 1980.

Fundamental rights - Constitution, Article 12 (1) - Equality of opportunity - University admissions - Meaning of "equal protection of the Law" - Reasonable classification not prohibited - Universities Act, No. 16 of 1978.

Constitution - Article 126 - Infringement of fundamental rights by "executive or administrative action - What constitutes "executive or administrative action" - University Grants Commission - Whether an organ or agency of the State.

The 1st Respondent (the University Grants Commission) established by the Universities Act No. 16 of 1978 had amongst its statutory objects the planning and co-ordination of University education, the apportionment amongst Universities of funds voted by Parliament, the maintenance of academic standards in Universities, and the regulation of the admission of students to each University. The Commission did not conduct its own examinations for entrance to the Universities but utilised the General Certificate of Education "A" Level Examination conducted by the Department of Education in the previous year as the qualifying examination from which successful candidates were chosen for entrance to the various Faculties of the Universities in the next academic year. In the year 1979, the Department of Education held two G.C.E. "A" Level examinations. The first was in April. The total number of students who sat this examination in subjects in the Bio-Science group was 18,743, and of these 4,863 (approximately 26 per cent) attained the minimum aggregate marks required for University admission, which was fixed by the Commission at 160 marks. The second examination was held in August. A total of 12,857 students offered subjects in the Bio-Science group and of these 1,887 students (approximately 15 per cent) attained the required minimum of 160 marks. Thus the total number that attained the minimum requirement for admission to the Bio-Science group of courses at both the examinations was 6,750. The Universities however, had only 995 places for new entrants in the Bio-Science group, of which 400 had been set-apart for medicine.

In view of the restricted number of places available for new entrants, and in view of the fact also that two G.C.E. "A" Level examinations had been held in 1979, the Commission decided that in making admissions for 1980 it will in the first instance distribute the places available in each course of study between the successful candidates at the examinations in the ratio of the number of students who attained the minimum requirement for admission at each examination to the total number who sat the examination. On this basis, of the 400 places available for medicine 288 were set-apart for candidates successful at the April examination whilst 112 were allocated to candidates successful in the examination held in August. From amongst those thus selected, there was a further division made on the basis of 30% of the available places being distributed in order of merit, 55% district-wise, and 15% to students from educationally under-privileged areas.

The 2nd petitioner, who was a candidate in the Bio-Science group of courses at the August examination, and had obtained the qualifying aggregate of 160 marks but

was not selected for entry to the Medical Faculty due to the lack of available places, challenged the validity of the Commission's decision to apply the ratio basis of selection on the ground that it violated her fundamental right to equality of opportunity guaranteed by Article 12(1) of the Constitution. She claimed that the primary criterion for admission on the basis of competitive examinations should be priority based on order of merit. Inasmuch as there was no established differences between the two examinations held in April and August and since the Commission had applied the common qualifying minimum of 160 marks to both the examinations, the petitioners alleged that the Commission's decision to apply the ratio basis resulted in unfair discrimination amongst those who were entitled to be treated equally.

Held :

(i) Equal protection of the Law as envisaged in Article 12(1) of the Constitution, was equal treatment by executive or administrative action of all persons alike, i.e., in the same situation and under like circumstances. There should be no discrimination amongst equals, either in privileges conferred or in liabilities imposed.

(ii) Reasonable classification is inherent in the concept of equality, because all persons are not similarly situated. No infringement of Article 12(1) is involved where unequals are being differently treated. Accordingly, Article 12(1) whilst it prohibits hostile discrimination does not forbid reasonable classification. For such classification to be sustained it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others, and the differentia in question must have a reasonable relation or nexus to the objects sought to be achieved. In other words, there must be some national nexus between the basis of classification and the objects intended to be achieved by such classification.

(iii) The Court is not concerned with the motivation for the impugned action, but with its effects. Selection by application of the ratio basis resulted in discrimination between equals, and accordingly should be struck down.

(iv) Constitutional guarantees of fundamental rights are directed against the State and its organs. The wrongful act of an individual, unsupported by State authority, does not attract the remedy under Article 126. The expression "executive or administrative action" in Article 126 embraces executive action of the State or its agencies or instrumentalities exercising governmental functions. Since the Universities Act had assigned the execution of a very important governmental function to the Grants Commission, the Commission was an organ or delegate of the Government and its action in the matter of admission of students to the Universities was challengeable under Article 126.

Cases Referred to :

1. *Rajendran* v: *State of Madras* A.I.R. 1968 Supreme Court 1012.
2. *Neal* v: *Delaware* Vol: 25 Law. ed. 567.
3. *Devadasan* v: *Union of India* A.I.R. 1964 Supreme Court 179, 185.
4. *Railway Express Agency* v: *New York* (1949) Vol: 336 U.S. 100.
5. *Probhudas Morarjee* v: *Union of India* A.I.R. 1966 Supreme Court 1044.

6. Re State of Andhra Pradesh A.I.R. 1972 Supreme Court 1375.

7. *Singh* v: *Darbhanga Medical College* A.I.R. (1969) Patna 11.

8. *State of J&K.* v: *Khosa* A.I.R. 1964 Supreme Court 1.

9. *Roshan Lal* v: *Union of India* A.I.R. 1967 Supreme Court 1889.

10. *Soans* v: *State of Hyderabad* A.I.R. 1969 Supreme Court 348.

11. *Rita* v: *Union of India* A.I.R. 1973 Supreme Court 1050.

12. *Surendrakumar* v: *The State* A.I.R. 1969 Raj 182.

13. *S.C. Pundit* v: *The State* A.I.R. 1972 Bombay 242.

APPLICATION Under Article 126 of the Constitution -

H.L. de Silva with *Gomin Dayasiri* for the petitioners.

K.N. Choksy with *Henry Jayamaha* for the 1st. respondent.

V.C. Gunatilleke, Solicitor General, with *S. Ratnapala*, State Counsel, for the Attorney-General

Cur. adv. vult.

August 4, 1980
SHARVANANDA J.

This petition has been filed by the 2nd petitioner (hereinafter referred to as the *petitioner*), a candidate who has failed to be selected by the 1st Respondent (the University Grants Commission) for admission to a course of studies in Medicine at a Ceylon University. She challenges the validity of the rule of selection adopted by the 1st Respondent for admission to the University as infringing her fundamental right to equality of opportunity guaranteed to her by Article 12(1) of the Constitution.

The 1st Respondent, namely the University Grants Commission (hereinafter referred to as the *Respondent),* is a body established by the Universities Act, No. 16 of 1978, with power to determine from time to time, in consultation with the governing authority of each University, the total number of students which shall be admitted to each University and the appointment of that number to the different courses of study therein and to select students for admission to each University in consultation with the Admissions Committee. - section 15(vi) and (vii). The objects of the Respondent have been set out by the statute to be, inter-alia:

(1) The planning and co-ordination of University education so as to conform to national policy.

(2) The apportionment to Universities of the funds voted by Parliament in respect of University education and the control of expenditure by each such University.

(3) The maintenance of academic standards in Universities.

(4) The regulation of the admission of students to each University.

Sections 19 and 20 of the Act provide that the Minister shall be responsible for the general direction of University education and the administration of the Act and that he may from time to time issue to the Respondent such general written directions as he may deem necessary in pursuance of the national policy in matters such as finance, University places, and the medium of instructions, to enable him to discharge effectively his responsibility for University education and the administration of the Universities Act, and that every such direction should, as soon as possible, be tabled in Parliament and should be complied with by the Commission.

The 1st petitioner, who is the father of the 2nd petitioner (a minor), was appointed next friend of the petitioner for the purpose of these proceedings. The 2nd Respondent is the Attorney-General.

In December 1975, the petitioner sat the National Certificate of General Education (N.C.G.E.) Examination that was introduced for the first time in the public examination systems for this country by the then Minister of Education, in substitution for the General Certificate of Education (G.C.E.) Ordinary Level Examination, and obtained seven A-Grade, one B-Grade, and two C-Grade passes. She then proceeded to prepare for the Higher National Certificate of Education (H.N.C.E.), which was at that time the examination prescribed for entry into a University for those who were earlier required to sit the N.C.G.E., in substitution for the General Certificate of Education (Advanced Level).

In 1978, the Ministry of Education decided to abolish the H.N.C.E. and to hold a New G.C.E. ('A' Level) examination to meet the requirements of the students who had qualified at the N.C.G.E. examination. At the same time, it decided to continue Advanced Level Examination to meet the requirements of those who had qualified at the G.C.E. ('O' Level) examination. Thus, in 1979, two Advanced Level examinations were held, namely, the G.C.E. (A.L.)

examination in April, and the New G.C.E. (A.L.) examination in August. The Respondent, in the exercise of its statutory powers, decided that University admissions in respect of the year 1980 should be based on the results of both these examinations.

The new G.C.E. (A.L.) examination was held in August 1979 upon a syllabus of studies prescribed for it by the Ministry, and the petitioner sat the G.C.E. (A.L.) examination held in 1979 in four subjects of the Bio-Science group chosen by her with a view to join a course of study in Medicine at a University. The results of the examination announced in March 1980 showed that the petitioner had secured two A-Grade passes in Pure Mathematics and Chemistry, a B-Grade in Zoology, and a C-Grade in Physics. A total of 12,857 students sat the new G.C.E. (A.L.) examination held in August 1979, offering subjects belonging to the Bio-Science group, and of these, 1,887 students (approximately 15 percent) attained the minimum requirement for University admission.

The Department of Education, in April 1979, had held a G.C.E. (A.L.) examination on a different syllabus for those students who had from 1975 been preparing for the G.C.E. (A.L.) examination. These consisted of those who had earlier sat the G.C.E. (A.L.) examination in April 1977 and/or in April 1978 and some first-timers. The total number of students who sat this examination in April 1979 offering subjects of the Bio-Science group was 18,743, and of these, 4,863 (approximately 26 percent) attained the minimum requirement for University admission.

The minimum requirement for University admission for the examinations held in April 1979 and August 1979 was that a candidate -

(1) should have at one and the same occasion passed in at least three approved subjects and obtained a mark of not less than 25 percent in the 4th approved subject; and

(2) should have obtained an aggregate of not less than 160 marks for the 4th subject.

Thus, the total number that attained the minimum requirement for admission to the Bio-Science group at both the, April and August 1979 G.C.E. (A.L.) examinations was 6,750 (4,863 plus 1,887). The Universities of Sri Lanka and the Ruhuna University College which provided the relevant courses had only 995 places in the Bio-Science group of courses. Of these, 400 had been set apart

for Medicine; the remaining 595 places had been set apart for Dental Surgery, Veterinary Science, Agriculture, and Bio-Science. According to the Respondent, it decided then to admit students of the April 1979 and August 1979 examinations in the following manner:

1. The places available in each course of study will, in the first instance, be distributed between the examinations in the ratio for the number of students who attained the minimum requirement for admission to each examination. For this purpose, the courses of study were classified into four groups, viz: Arts, Commerce, Bio-Science; and Physical Science;

2. (a) Thirty percent of the available places in respect of each examination will be filled in the order of merit determined on an island-wide basis;

   (b) Fifty-five percent of the available places in respect of each examination will be allocated to the 24 Revenue Districts in proportion to the population in each district and will be filled in the order of merit in each district; and

3. The balance 15 percent of the available places in respect of each examination will be allocated to the 13 Revenue Districts which have been deemed to be educationally under-privileged and will be filled in the order of merit within each such district.

On the basis of this decision, the 400 places in Medicine will be distributed, according to the Respondent, in the following manner among those who qualified for University admission:

Ratio = 4863: 1887 *or* 7.2 : 2.8

April Examination		August Examination
Total allocation:	288	122
30%	86	34
55%	158	62
15%	43	17
	287	113

Thus it would appear that, on the application of the ratio of 7.2 : 2.8 adopted by the Respondent to the 30 percent of the successful students taken in on the merit basis, 86 places will be allocated to the April candidates and 34 places to the August candidates.

The petitioner challenges the legality or validity of the aforesaid policy-decision of the Respondent to apply this ratio of 7.2 : 2.8 in the matter of selection for admission to the University courses in Bio-Science between the successful candidates in the April and August examinations, respectively. She states that the primary and ordinary criterion of admission on the basis of a competitive examination for entrance to the University for a particular course of study should be priority in order of merit on the performance of each candidate measured by the aggregate of marks obtained by such candidate at the prescribed examination.

Counsel for the petitioner referred to *Rajendran* v. *State of Madras* ([1]) and submitted that even the allocation of 55 percent of the seats district-wise was illegal, but that it was not necessary for him, in this case, to raise that issue and reserved the right to question, in an appropriate case, the validity of the restrictions placed on admission on the basis of merit to a 30 percent of the total number of places available. For purposes of argument on the facts of the present case, he rested his case on the assumption of the legality of such restriction and contended that the petitioner is entitled to be considered on the basis of the aggregate of marks received by her for selection by the Respondent to fill the 120 available places without any further restriction.

The petitioner complains that the superimposition of the ratio of 7.2 : 2.8 as between the April and August candidates is unlawful and would, if implemented, be a violation of her fundamental right to equality of treatment under the law. The petitioner contends that in ascertaining the order of merit among the 120 places in Medicine set apart for selection on the merit basis, the sole question for determination by the Respondent is the ranking of each candidate according to the aggregate of marks received by each candidate at the April and August examinations and that such rank order should be ascertained according to the aggregate of marks of the candidates at both the examinations in an integrated list. She further submits that the adoption of the 7.2 : 2.8 ratio by the Respondent is inequitable and unreasonable. She contends the the ratio has no relevance to selection on merit basis and would have the result of conferring an undue advantage on the April batch which consisted of a large number of students who had sat

once or twice earlier for the examination and which, hence, had a greater number of students attaining the 'pass' standard. The petitioner further states that to reduce the intake of candidates on merit basis at the August 1979 examination on account of the high proportion of failures at the said examination would be discriminatory and unfair to the candidates, including herself, who have achieved a high level of excellence at the said examination in the first try itself.

The Respondent admitted that, under normal circumstances, the order of merit determined on the basis of marks should be the sole criterion for selection at any competitive examination to a University. But it stated that in determining the criterion for admission in 1980, it was faced with the problem of "students who had qualified at two separate examinations which were held on two separate sets of syllabuses and which were therefore neither of the identical students nor could be equated" and that after considering the various alternative methods, it was finally decided that the allocation of available places as between the two examinations in the ratio of the number of students attaining the minimum requirement for admission at each examination would be the most acceptable and equitable solution. The Respondent further pleaded that "as the two examinations concerned were not of the same standard, there is no rational method by which the performance of candidates could be jointly considered or a combined order of merit determined". Apart from making the bare statement that the two examinations were not of the same standard, the Respondent did not choose to substantiate in what respect or extent the standards were different. The Respondent accepted that on the application of the ratio 7.2 : 2.8 to the category of the first 30 percent of students gaining admission in Medicine on merit basis, 34 places only will be allocated to the August candidates who have qualified and that the petitioner would not be included within the first 34 percent places set apart for the August group of qualified candidates. The Respondent further stated that the petitioner's exclusion would not be unfair or improper because "it would result from a scheme of admission universally applicable to all the competing candidates but not directed against the petitioner or other individual candidate and thus there is no discrimination which could give rise to any denial of fundamental rights".

The Respondent further submitted that it was not practicable to equate rationally the performances at the two examinations and that it was therefore quite possible that a candidate having a low aggregate at one examination could be selected in preference to a

candidate having a higher aggregate at the other examination "as the examination had been conducted on separate syllabuses and varying schemes of examinations and it is not possible to determine which of these two candidates is superior in terms of academic attainment". The Respondent contended that the ratio basis of selection adopted by it was neither unfair or discriminatory because "it is based upon the actual number of candidates attaining the minimum requirement for admission, and thus when the standard of the two examinations vary, a ratio based upon any other premise would not be defensible". The Respondent further stated that the reason why it rejected a common merit list on the basis of raw marks obtained by candidates at both the examinations was that the two examinations were intended for two separate categories of students and conducted on separate syllabuses and schemes of examinations and was therefore not the same and that in the circumstances it would be unfair to prepare a common merit list and there was no rational basis for equating the marks obtained.

According to the disclosure made by the Respondent, the student of the Bio-Science group who had come first in the island at the April examination had only an aggregate of 273, while the student who had come first in the same group at the August examination had an aggregate of 327, and the corresponding aggregate in the Physical Science group was 312 for April and 362 for August. It would appear that a number of students, including students who had not come within the first 34 places in the August batch, might have scored an aggregate higher than the aggregate of 273 scored by the student who had come first in the April examination. The Respondent, however argues that as the two examinations were not the same, it was unfair to conclude that the one who obtained 327 in August is superior to the one who obtained 273 in April, or that the one who obtained 327 in August was superior to the one who obtained 312 in April. The Respondent however admitted that with reference to the two examinations, no one could say which was the superior and which was the inferior though the two syllabuses were not the same. The Respondent states that several alternate methods of selection were considered at a seminar by it and that it finally decided, after consideration of each of the methods, to adopt the suggestion of allocating the available places to the two examinations in proportion to the numbers attaining the minimum requirement for admission at each examination. According to the Respondent, under such a ratio each group had an opportunity of admission exactly proportionate to its total number.

The Respondent also raised an objection, in limine, that the alleged grievance of the petitioner did not come within the purview of Article 126 of the Constitution and that its act of selection to Universities did not savour of executive or administrative action capable of affecting fundamental rights as envisaged in Article 126 of the Constitution.

What the petitioner complains in her present application is that the Respondent, as an organ of the Government, has, by arbitrarily adopting the ratio of 7.2 : 2.8 between the candidates who qualified in the April and August examinations, respectively, denied to her equality of opportunity to be considered for selection for University admission on merit basis.

Article 4(d) of the Constitution provides that "the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced *by all the organs of Government* and shall not be abridged, restricted or denied", save in the manner and to the extent provided in the Constitution.

Article 12 appearing in the Chapter of Fundamental Rights provides that:

> "1. All persons are equal before the law and are entitled to the equal protection of the law.
>
> 2. No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth, or any one of such grounds."

Equality of opportunity is only an instance of the application of the general rule of equality laid down in Article 12. Equal protection of the law postulates an equal protection of all alike in the same situation and under like circumstances. There should be no discrimination among equals, either in the privileges conferred or in the liabilities imposed.

Article 12 of the Constitution does not confer on the petitioner a right to be admitted to a University. It only guarantees a right to equality of opportunity for being considered for selection for admission to a University.

Constitutional guarantees of fundamental rights are directed against the State and its organs. Only infringement or imminent infringement by executive or administrative action of any fundamental right or language right can form the subject matter

of a complaint under Article 126 of the Constitution. The wrongful act of an individual, unsupported by State authority, is simply a private wrong. Only if it is sanctioned by the State or done under State authority does it constitute a matter for complaint under Article 126. Fundamental rights operate only between individuals and the State. In the context of fundamental rights, the 'State' includes every repository of State power. The expression "executive or administrative action" embraces executive action for the State or its agencies or instrumentalities exercising governmental functions. It refers to exertion of State power in all its forms.

The right to equality pervades all spheres of State action, including administrative action of all kinds by all Government bodies. The Constitutional provision therefore means that no agency of the State or the officers or agents by whom its powers are exerted shall deny to any person the equal protection of the law. "Whoever by virtue of public position under a State government ..... denies or takes away the equal protection of the laws violates the Constitutional inhibitions, and as he acts in the name and for the State and is clothed with the State's authority, his act is that of the State." - *Neal* v. *Delaware* (2).

Education is one of the most important functions of the State today. The large expenditure of money incurred by the State for education signifies its recognition of the importance of education to a democratic society. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity, where the State undertakes to provide it, is a right which must be made available to all on equal terms. The Constitution enjoins the organs of Government to secure and advance and not deny this fundamental right of equality of treatment.

By the Universities Act, No. 16 of 1978, the Respondent-Commission was established to be in charge of the planning and co-ordination of University education and the regulation of the administration of Universities and the admission of students to Universities. Sections 19 and 20 of the Act provides that the Minister shall be responsible for the general direction of University education and the administration of the Act and that he could issue directions to the Commission. The Respondent-Commission is further charged with the apportionment to the several Universities of the funds voted by Parliament in respect of University education and the control of expenditure by each such University. Parliament maintains the Universities, and the monies provided by it are

disbursed by the Respondent. The Universities Act has assigned the execution of a very important governmental function to the Respondent. In the circumstances, it is idle to contend that the Respondent is not an organ or delegate of the Government and that it's action in the matter of admission of students to the Universities under it does not have the character of executive or administrative action within the meaning of Article 126 of the Constitution. The preliminary objection is accordingly overruled.

Section 15(vii) of the Universities Act confers on the Respondent the power and/or discretion to select students for admission to each University in consultation with the Admissions Committee. Though this Court will not, in the exercise of the jurisdiction vested in it by Article 126 of the Constitution, seek to control the administrative discretion exercised by the Respondent within the proper sphere, it will intervene to see that the Respondent, as an organ on instrument of Government, does not exercise such power or discretion in derogation of the fundamental rights of citizens. The Respondent has to exercise its discretion with due regard to the fundamental rights guaranteed by the Constitution, without impinging on a person's fundamental right.

Article 12 of the Constitution forbids hostile discrimination, but does not forbid reasonable classification. Equality before the law does not mean that the same set of laws should apply to all persons under every circumstance, ignoring differences and disparities between man and things. Reasonable classification is inherent in the concept of 'equality', because all persons are not similarly situate. In *Devadasan* v. *Union of India* [3], Mudhalkar J. observed: "What is meant by equality in this Article is equality among equals. It does not provide that what is aimed at is an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of differences such as age, sex, education, and so on and so forth and as may be found among people in general. Indeed, while the aim of Article 14 (corresponding to our Article 12) is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description, and the differences which may obtain between them are of no relevance for the purpose of applying a particular law, reasonable classification is permissible -it does not mean more." It is for the State to make a reasonable classification. For such classification to be sustained, two conditions must be fulfilled:

(1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(2) The differentia in question must have a reasonable relation or nexus to the objects sought to be achieved. In other words, there must be some rational nexus between the basis of classification and the objects intended to be achieved by such classification.

Discrimination, to be violative of Article 12, must however be discrimination between equals. No infringement of Article 12 is involved where unequals are being differently treated.

Equal protection of the law is denied if in achieving a certain object, persons similarly circumstanced are differently treated by law, and the principle underlying that different treatment has no rational relation to the object sought to be achieved by the law. Where the discrimination is not based on any rational ground bearing upon the subject dealt with, such action will offend the principle of equality and will be void. In this context, it is well to remember the words of Justice Jackson: "The equal protection clause ceases to assure either equality or protection if it is avoided by any conceivable difference that can be pointed out between those bound and those left free". *Railway Express Agency* v. *New York* [4].

Executive action violating the principle of equality or the equal protection of the laws offends Article 12. What the legislature cannot do, the executive cannot obviously do. Article 126 provides relief when executive action conflicts with fundamental rights. Where a person is discriminated against as a result of executive action and denied equal privileges with others occupying the same position, it is not necessary for him to prove that in taking such action, the executive was actuated by a hostile or inimical intention against a particular person or class. Where the effect of such action is discriminatory, the fact that the dominant purpose of the authority was not to discriminate is immaterial. The Court is not concerned with the motive for such action; it is only concerned with its effect or impact on the citizen.

A person relying on a plea of unlawful discrimination must set out with sufficient particulars his plea showing how, between persons similarly circumstanced, discrimination has been made, which discrimination is founded on no intelligible differentia. If the petitioner establishes similarity between persons who are subjected to differential treatment, it is for the State to establish that the differentia is based on a rational object sought to be achieved by it. But where similarity is not shown, the plea as to infringement of Article 12 must fail. "To make out a case of

denial of the equal protection, a plea of differential treatment is by itself not sufficient. The petitioner, pleading that Article 14 has been violated, must make out that not only had he been treated differently from others, but that he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment is unjustifiable." -*Probhudas Morarjee* v. *Union of India* (5).

The Respondent justified its basis of selection on the ground that though, for purposes of qualifying for admission to the University, candidates in the April and August examinations were placed on an equal basis, yet, the examinations were different and were conducted on two separate syllabuses and hence the April candidates and August candidates were not similarly circumstanced and were not equals so as to claim further equal treatment in the ultimate selection for admission to Universities. Though the two examinations were different, based on different syllabuses, yet, for the purpose of qualifying for admission to the Universities, the Respondent has treated both the examinations as of the same standard. The Respondent has not chosen to tell this Court that, though the examinations were different, whether in its evaluation one was of a higher standard and the other of a lower standard, and, if so, which was superior and which was inferior and whether there was a different basis or norm of marking. Had there been such vital differences in the syllabuses and in the standard of knowledge in the subjects for the examinations, it cannot be reasonably understood as to how the Respondent came to adopt the two examinations as a common criterion for measuring the fitness for admission to the same course of study at the Universities. It is to be noted that the requirements to qualify for University admission were the same for candidates in both the examinations and that the same aggregate of marks, viz. 160 marks, was adopted as the qualifying total at both the examinations. This action of the Respondent cannot be reconciled with its present protestation that the examinations are so different that the candidates who qualified for University admission on the said examinations are not equally circumstanced. The Respondent's assertion that the two examinations "were not of the same standard" is inconsistent with its earlier adoption of both the examinations to be equally competent tests of suitability for admission to the Universities and its requirement of the aggregate of 160 marks in either examination to qualify for admission to the Universities. The Respondent states that it has decided to fill 30 percent of the available places at the Universities on merit basis. If so, one cannot see any justification for any inroads into or erosion of the merit quota with the object of selection for admission to the Universities being to secure the best possible material for the Universities.

The consequence of the Respondent's decision to select candidates on the results of both the April and August examinations was that eligibles from both the sources were integrated into one class; no discrimination in the matter of ultimate selection for admission could thereafter have been made in favor of the eligibles from one source as against those from the other source. Once the qualified students from both sources were clubbed together, they constituted one class and there could not be a class within that class. There came to exist only one source of selection and not two sources of selection and there was no basis for any classification and no distinction could any further be made in selecting the best candidates for admission to the Universities. The preferential treatment of one source in relation to the other, based on the differences between the said two sources, can no further be justified. Also, there was no reasonable nexus between the differences in the two sources and the ultimate objective of selection, namely, to secure the best talent. The discriminatory ratio adopted by the Respondent is thus violative of Article 12 of the Constitution. Allocation of places in the Universities on the basis of the ratio decided on by the Respondent will result in candidates of an inferior calibre from the April batch being selected, while candidates of a superior calibre from the August batch not being selected. In view of the fact that there is a large number of candidates than places available in the Universities, the object being to secure the best possible material for admission to the Universities, merit is the only fair and satisfactory basis of selection. The Respondent itself recognised the excellence of the merit criterion by allocating 30 percent of the available places on merit to be determined on an all-island basis. This object will be defeated by the ratio basis of selection. Selection of those who had obtained a less number of marks in preference to those who had obtained a higher number of marks in the examinations who had been placed on par by the Respondent for purposes of qualifying for admission to the Universities is fundamentally unjust and cannot be sustained. The differences that are alleged by the Respondent to have existed in the two sources of admission are irrelevant for the ultimate selection. In my opinion, the Constitutional objection taken by the petitioner has to be upheld. All those who qualified for admission at the April and August examinations were integrated into one class of qualified candidates. Once the qualified candidates were absorbed into one class, they cannot, by reference to their original source, be discriminated in the selection for admission to the Universities. The discrimination that is manifest in the Respondent's policy decision is, in my view, not based on any reasonable classification and is violative of the petitioner's fundamental right of equality of

opportunity. All those who qualified for admission in both the examinations must be afforded equality of opportunity, and this principle of equality of opportunity is violated by a process of selection not grounded on the merits of the candidates. Counsel for the Respondent submitted that the April batch of students consisted mainly of students who had sat earlier and failed to secure admission and that if they do not secure admission this year, they would have no further chance. However sympathetic one may be with the plight of such students, sympathy cannot supersede the claims of merit in the matter of admission to the Universities.

It is useful, at this stage, to examine some decisions of the Supreme Court and High Courts of India on Article 14 of the Indian Constitution (which corresponds to Article 12 of our Constitution) to appreciate the scope and operation of the doctrine of equality in the context of parallel facts. These decisions afford some guidance.

Re State of Andhra Pradesh (6)

The Government of Andhra Pradesh announced rules for the selection and admission of students to the Integrated M.B.B.S. Course in the Government Medical Colleges in the Andhra Pradesh area. The Rules provided a pattern of allotment of seats by reference to certain qualifying examinations. The candidates eligible for admission to the Integrated M.B.B.S. Course being largely taken from the students who had passed the qualifying examination for the Pre-University Course (P.U.C.) and those who had passed the Higher Secondary Course (Multi-Purpose) (H.S.C. - M.P.), the Rules provided for a pattern of earmarking seats for the students according to the qualifying examinations taken. According to these Rules, there was to be an Entrance Test for all the applicants for admission to the First Year Integrated M.B.B.S. Course, and the results of the Entrance Test was to form the basis for admission to the Medical Course, and candidates possessing the minimum qualification of H.S.C. (M.P.) and P.U.C. or equivalent examinations were eligible to appear in the Entrance Test. Thus, all the candidates possessing these qualifications were put on par and were qualified to take the Entrance Test. By Rules 8 and 9, 40 percent each of the seats were reserved for the H.S.C. (M.P.) and P.U.C. candidates. Rule 10 provided that all reservations would be subject to the order of merit of marks obtained in the Entrance Test by the students in the relevant category of reservations, namely P.U.C. and H.S.C. A P.U.C. candidate challenged the validity of the classification of the candidates into two categories as P.U.C. and

H.S.C. (M.P.) and reserving 40 percent of the seats to the latter. The P.U.C. candidate contended that the classification and reservation of 40 percent of the seats to the H.S.C.(M.P.) candidates was violative of the right of equality of treatment and that it was arbitrary and illegal. In particular he contended that he had obtained more marks than some of the H.S.C. (M.P.) candidates in the Entrance Test and that he was entitled to admission in preference to such candidates. The stand taken by the State was that the P.U.C. and H.S.C. (M.P.) candidates form two distinct categories and that they did not form part of the same class. The High Court held that the only basis for selection for the First Year Integrated M.B.B.S. Course in relation to the H.S.C. (M.P.) and P.U.C. candidates is the marks obtained by them in the Entrance Test provided by the Rules. According to the High Court, selection of candidates from these categories must only be from those who have obtained the highest number of marks in the said Test, irrespective of the fact as to which category they belonged. In view of the fact that selection was sought to be made by earmarking 40 percent of the seats to the H.S.C. (M.P.), the latter had got an unfair advantage over the P.U.C. candidates who would be denied admission though they had obtained a higher number of marks. On this view, the High Court held that Rule 9 providing for reservation of 40 percent to the H.S.C. (M.P.) was illegal as being discriminatory and as such offended Art. 14 of the Indian Constitution (corresponding to Art. 12 of our Constitution). The said Rule was struck down in consequence. There was an appeal to the Supreme Court of India. Affirming this part of the judgement of the High Court, the Supreme Court observed: "When the scheme of the Rules clearly shows that the basis of selection for the First Year Integrated M.B.B.S. Course is according to the results of the Entrance Test, the question is whether reservation of 40 percent of the seats for the H.S.C. candidates under Rule 9 is valid? Under this Rule, though a P.U.C. candidate may have got higher marks than an H.S.C. candidate, he may not be able to get admission because 40 percent of the seats allotted to the P.U.C. candidates would have been filled up, whereas an H.S.C. candidate who may have got lesser number of marks than a P.U.C. candidate may be eligible to get a seat because of a 40 percent quota allotted to the H.S.C. candidates has not yet been completed. Does this amount to an arbitrary discrimination violative of Art. 14? Prima facie, having due regard to the scheme of the Rules and the objects sought to be achieved, namely, of getting the best students for the Medical College, the provision is discriminatory and it has no reasonable relation to the object sought to be achieved (para 25)...."In respect of eligibility for applying for admission to the First Year M.B.B.S. Course, no distinction has been drawn between the P.U.C. and the

H.S.C. candidates, both of whom have to get at least 50 percent marks in Physical and Biological Sciences. So, that clearly shows that they have been put on a par as far as eligibility is concerned. But the discrimination is made only after the Entrance Test is over by denying admission to the P.U.C. candidates who have got higher marks than some of the H.S.C. candidates who got admission because of the 40 percent reservation." (para 38). The Court further said: "it is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical College. But when a common Entrance Test has been prescribed for all the candidates on the basis of which selection is to be made, the Rule providing further that 40 percent of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such classification is valid, the said classification has no reasonable relation to the object sought to be achieved, namely selecting the best candidates for admission to the Medical College. The reservation of 40 percent for the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence, we agree with the High Court when it struck down this reservation under Rule 9 as violative of Art. 14." (para 51).

The above observations of the Supreme Court of India apply equally well to the facts of the instant case. In the above case, there was one common Entrance Test for both P.U.C. and H.S.C. candidates, while in the present case, though there were two tests, viz. the April and August examinations of 1979, yet, for purposes of admission to the Universities, the Respondent had made them equivalent tests for such admission, and hence it can legitimately be said that one common Entrance Examination was held on two occasions, namely, in April and August 1979.

R.S. Singh v. *Darbhanga Medical College* [7]

In prescribing the qualifications for admission to the M.B.B.S. Course, a direction was included by the authorities that all categories having the B.Sc. (Hons) Degree should be admitted straightaway to the M.B.B.S. Course. The effect of this direction was that B.Sc. (Hons) candidates would be preferred to candidates with a B.Sc. 'pass' Degree irrespective of the marks obtained by them. The validity of this direction was questioned in this case. The difference between the B.Sc. (Hons) and the B.Sc. 'pass' was only in respect of specialisation in respect of a particular subject in which the Honours Degree is offered. Thus, a B.Sc. 'pass'

candidate taking Physics, Chemistry and Biology, and a B.Sc. (Hons) candidate offering only Biology would be taking the same examination in the other two subjects, viz. Physics and Chemistry, though in Biology the latter's knowledge would be of an advanced nature and he would have to answer extra papers. Moreover, a candidate could obtain a B.Sc. 'pass' even though the total marks obtained might be below 45 percent in each subject; whereas a B.Sc. (Hons) candidate could not pass unless he secured 45 percent in this subject in which the Honours course is offered. But there was no such minimum in respect of the other subjects offered by him. Thus, there might be instances where a B.Sc. 'pass' candidate had secured 80 percent in Physics, Chemistry and Biology; whereas a B.Sc. candidate who, offering Honours in Biology, has secured the minimum of 45 percent in the subject and less than 45 percent in Physics and Chemistry, in which subjects he has answered the same papers as the B.Sc. 'pass' candidate. The only distinction between the two was in the fact that in the Honours subject, viz. Biology, he studied for an advanced course and answered extra papers. The crucial question for consideration was whether, on account of this difference, it would be reasonable to direct that all candidates having a B.Sc. (Hons) Degree should be admitted straightaway and should thus be preferred to candidates with a B.Sc.'pass' Degree, irrespective of the marks obtained by them. The Court held that such a direction was unreasonable and violative of Article 14 of the Indian Constitution (right of equal treatment). It observed that, though, undoubtedly, it was right to say that B.Sc. (Hons) candidates might be taken as a separate group or class by themselves, there seemed no reasonable nexus between the principle on which the classification was made and the object to be achieved by this direction, viz. securing suitable candidates for admission to the Medical College.

State of J. & K. v. *T.N. Khosa* [8]:

This case was relied on by Counsel for the Respondent. The issue for consideration before the Supreme Court was: If persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications? Answering the question in the affirmative, the Court held that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that Graduates alone shall be eligible for such promotion to the exclusion of Diploma-holders was held not to be violative of the right of equality of treatment. The classification of

Assistant Engineers into Degree-Holders and Diploma-holders for purposes of promotion to the post of Executive Engineer, could not be held to rest on an unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the Engineering Services. If this be the object, the classification was clearly related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. The Supreme Court held that, in order to establish that the protection of the equal opportunity clause had been denied to them, it is not enough for the Diploma-holders, who were the petitioners in that case, to say that they have been treated differently from the Graduates, not even enough that differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the Constitutional guarantee of equality only if it rests on an unreasonable basis. It was therefore incumbent on the petitioners to plead and show that the classification of Assistant Engineers into those who held Diplomas and those who held Degrees for the purpose of promotion to the post of Executive Engineer was unreasonable and bore no rational nexus to this purported object. The Court observed: "Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears a nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such inquiry permissible, it would be open to the Courts to substitute their own judgement for that of the legislature or the rule-making authority on the need to classify, or the desirability of achieving a particular object."

In Roshanlal v. *Union of India* [9], the petitioner entered Railway Service on March 6, 1954, as a skilled fitter and was selected for training for the post of Train-Examiner Grade 'D' on June 5, 1958, and was confirmed in that grade on October 25, 1959. Persons were appointed to Grade 'D' by promotion and by direct recruitment. The case of the petitioner was that he, as a promotee, along with the direct recruits, formed one class in the entry Grade 'D', and their condition of service was that seniority was to be reckoned from the date of appointment as Train-Examiner in Grade 'D', and promotion to grade 'C' was on the basis of a seniority-cum-suitability test, irrespective of the source of recruitment. By notification, preferential treatment to the direct recruits in Grade 'D' was sought to be given with regard to promotion to Grade 'C'. The petitioner challenged this notification giving such favourable treatment to the direct recruits as being arbitrary and discriminatory. Holding with the petitioner, the Supreme Court

stated: 'In our opinion, the Constitutional objection taken by the petitioner to this part of the notification is well-founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to grade 'D', there was one class in Grade 'D', formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favor of the recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class, and they cannot be discriminated for the purpose of further promotion to the higher Grade 'C'."

The Supreme Court, in *State of J. & K.* v. *T. N. Khosa* [8], distinguished *Roshanlal's case* thus: "What that case lays down is that direct recruits and promotees lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once again. Roshanlal's case is thus no authority for the proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. In the instant case, classification rests fairly and squarely on the consideration of educational qualifications: Graduates alone shall go into the higher posts, no matter whether they were appointed as Assistant Engineers directly or by promotion. The discrimination is therefore not in relation to the source of recruitment as in Roshanlal's case."

These cases bring out the distinction that, after integration into one class, persons drawn from one source cannot, in the matter of promotion, be favoured as against those drawn from another source, for the reason merely that they are drawn from different sources. Some other basis of distinction should exist to justify the favoured treatment. According to these cases where promotees are integrated into one class and appointed to grade, there can be discrimination in the matter of promotion from that grade to another on a ground other than that of source. But they do not say that within that original grade there can be any discrimination by reference to source of recruitment.

M. Soans v. *State* [10]:

On the reorganization of States, Physical Instructors from the State of Hyderabad and four other regions were allotted to the new State of Mysore and they became Physical Instructors in that new State. All these posts were treated as equivalent posts, in respect of which a common seniority list was prepared. On a revision of the pay-scale of Physical Instructors, the allottees from the other four areas were allotted a lower pay-scale than that of the allottees from the State of Hyderabad. It was held that the assignment of a higher pay-scale in respect of the allottees who arrived from one State and a lower pay-scale for the allottees from another was discriminatory and unjustified. It was further held that discrimination was not possible even on the ground that the post of Physical Instructor in the erstwhile State of Hyderabad carried a higher pay-scale than the pay-scale which was applicable to the post of Physical Instructor in the region from which the petitioners arrived. The Court said that once the allottees from the five different regions became Physical Instructors in the new State of Mysore and their posts were recognised as equivalent posts, there could be no justification for prescribing a higher pay-scale in respect of the allottees who arrived from one State and a lower pay-scale for the allottees from another. The cadre in the region from which they came was held to have no relevance after the integration of the services in the new State of Mysore.

Rita v. *Union of India* [11] was cited by Counsel for the Respondent to justify the impugned discrimination. A certain number of seats in Government Medical Colleges were reserved for the M.B.B.S. Course for repatriates from Burma and from Bangladesh. The petitioners had come from Burma after 1.6.64, and as repatriates they were entitled to apply for the reserved seats. The petitioners applied for the reserved seats but they were not selected. The petitioners stated that the respondents, who were recent repatriates, were less qualified on merits than the petitioners, but were admitted to the reserved seats while they were not. The petitioners complained that since the respondents had got a lesser percentage of the aggregate marks than they, they had been unreasonably discriminated. The Government contested the petitions on the ground that the number of seats at the disposal of the Government was limited and hence the Government had to make a choice between the migrants who had come recently and the migrants who had come comparatively earlier, and that in the opinion of the Government, the more recent migrants required greater rehabilitation assistance and provision of facilities, including facilities for medical education, than those who had immigrated much earlier; and, for that reason, the respondent-repatriates who had come within five years prior to the selection

were preferred to those who had been repatriated more than five years before the selection; and since the petitioners had migrated more than five years before the selection, though they had scored more marks, they were left out. The Supreme Court held that, classifying administratively, repatriates between more re-settled and less re-settled on the basis of length of stay in this country and selecting less re-settled for the limited seats reserved for them in the Government Medical Colleges was not violative of 'equal treatment'. The Court said that "the petitioners were more resettled than the respondents, and since the object of the rule creating reservation of seats was rehabilitation and re-settlement, it cannot be said that the classification so made administratively had no reasonable nexus to the object in view. The respondent-candidates were also repatriates, though it is true that they received a lesser percentage of the aggregate marks than the petitioners. If both the categories had been placed in similar circumstances, it would have been possible to urge that there has been discrimination. But since the petitioners and their families had been better settled and rehabilitated than the respondents and their families, it was open to the Selection Committee to decide administratively how best the purpose of rehabilitation could be served." Since the object of the rule creating reservation of seats was rehabilitation and re-settlement, the classification had a reasonable nexus to the object in view.

Counsel for the Respondent cited the case of *Surendra-Kumar* v. *State* [12], and drew our attention to the following passage in the judgement: "While judging the reasonableness of this classification therefore, we have to keep in mind not only the abstract proposition of reasonableness, but also the circumstances prevailing in the country and our larger national interests, which are supreme. The contention on behalf of the State that ours is a border State and that the reservation for the children of Defence personnel is in the larger interests of the nation is not without substance, and is, in our view, a reasonable classification." Relying on this passage, Counsel submitted that it was legitimate for the Respondent to take into consideration, as a matter of national interest, the fact that most of the candidates who sat the April examination were sitting either for the second time or the last time and that they had only one or no more chances to seek admission to the Universities - the rule being three chances for candidates to seek admission; while on the other hand, the candidates who sat the August examination were sitting for the first time and hence had two more shies. He drew our attention to Article 27(2)(h) appearing in Chapter 6 of the Constitution which provides that "the object of the State is complete eradication of illiteracy and the

assurance to all persons of the right to universal and equal access to education at all levels". Counsel stated that in pursuance of this objective, the Respondent was justified in discriminating in favor of the April students in order to provide "equal access to education at all levels". All that Article 27(2)(h) means is only that *the right to equal access* to educational institutions should be made meaningful by elimination of economic and social distinctions. All persons must be enabled to have equal opportunity of access to educational institutions at all levels. National interest only demands provision of equal opportunity of access and not equal access regardless of the calibre of those seeking admission.

Counsel for the Respondent relied also on the case of *S.G. Pandit* v. *State* [13]. In that case, the petitioner sought admission to the B.J. Medical College, Poona, and was refused admission, and the petitioner complained against the rule of admission, particularly the rule which provided that, for admission to the B.J. Medical College, Poona, and Miraj Medical College, Miraj, the seats of the two Medical Colleges should be pooled together and distributed between the two Colleges in the proportion of the number of students registered for the Pre-Professional (Medical) Examination at the Poona University and the Shivaji University, Kolhapur. It was not disputed that, as a result of the application of the impugned rule, the petitioner was refused admission, although he was held to have passed the examination in the First Class in the Pre-Professional (Medical) Examination held in April 1970 by the Poona University, obtaining about 66.8 percent marks in the examination. The scarcity of seats available for students of the Poona University and Shivaji University had deprived the petitioner of a chance to become a student for the M.B.B.S. Course in the B.J. Medical College, Poona. The pooling of the students had been going on since 1964 when the Shivaji University had started, and the system of pooling was not challenged in the petition. What was challenged by the petitioner was the validity of the allocation made in the seats in the B.J. Medical College on the basis of the number of students registered for the Pre-Professional (Medical) Examination at the two Universities. It was alleged that the rule which directed the allocation on behalf of the students so registered was arbitrary and discriminatory between the students of the Poona University and the students of the Shivaji University, without any reasonable or logical nexus with the object of the Government in giving admission to the best students to the Medical College. According to the petitioner, the Government ought to have allocated the seats not on the basis of the number of students who registered for the examination, but on the basis of the number of students who passed the examination and who got

the minimum qualification marks. The Court rejected the submissions on the simple ground that the petitioner could not complain of discrimination between himself, who is a student of the Poona University, and other students of the Shivaji University. The students of the two Universities formed two distinct classes in view of the separate examinations conducted by the said Universities. The Government further wanted to provide fair opportunities to the students of the Universities by equitably allotting the seats available at Poona and Miraj. It was held that the classification was reasonable having regard to the existence of these two Universities and their history and that the basis adopted by the Government had a relevant connexion with the objects sought to be achieved by the Government, viz. of allocating certain seats at the Poona B.J. Medical College to the students of the Shivaji University, because the Government was not in a position to provide more seats in the Miraj Medical College for the time being. The Court said that the question of admitting the best students on the basis of their merits arose only after the said object of allocation was fulfilled and that the petitioner had no right to ask for any relief from the Court on the ground that the allocation so made by the Government of the seats in the Poona B.J. Medical College worked against him. The petitioner further contended that the number of students registered for the examination cannot be a rational basis for determining the allocation. This contention too was rejected with the observation that "in theory it may be possible to conceive that only those who seek admission on the basis of securing qualifying marks must be taken into consideration for allocation. In practice, however, such a method would result in a great number of difficulties in working out the rule. The allocation of seats has to be made sufficiently in advance of the commencement of the Academic Year. The College authorities must know in advance how many students of the Shivaji University and Poona University have to be admitted and on what basis. It is also possible that the Government has in view the danger of unhealthy rivalry developing between the two Universities for securing a larger number of seats in the Medical Colleges. It cannot therefore be said that the basis adopted by the Government is unreasonable. It has a rational connexion with the objects of the Government to allocate certain seats to students of the Shivaji University in time for the College authorities to know how many students could be admitted to the College and on what basis." The decision in this case does not help the Respondent. The questions in issue are different and the backgrounds are different.

In my view, neither on principle nor on authority can the policy-decision of the Respondent be regarded as valid or tenable. It

offends the principle of equality enshrined in Article 12 of the Constitution. In terms of its own policy-decision, merit is the sole criterion for admission to the merit category of 30 percent, to the districtwise category of 55 percent, and to the under-privileged category of the balance 15 percent. The application of any ratio based on any consideration other than merit to the aforesaid respective categories would infringe the rule of 'equality of treatment' projected as a fundamental right in the Constitution. Selection of candidates into the three aforesaid classes has to be on the basis of merit and merit only. The policy decision of the Respondent infringes the petitioner's fundamental right of equality of opportunity. The petitioner is accordingly entitled to an order, and this Court accordingly makes order against the Respondent and its officials, restraining them from adopting the aforesaid ratio of 7.2 : 2.8 or any other ratio in selecting candidates for University admission in 1980 either on the basis of merit and/or the district quota and/or the under-privileged quota on the results of the G.C.E. (A.L.) examination held in April and August 1979.

In the exercise of the jurisdiction vested in this Court by section 126(4) of the Constitution, this Court quashes the Respondent's decision to adopt the ratio basis of selection and directs the Respondent and its officials to make the selection of candidates for admission to the Universities in 1980 in respect of the three categories of 30 percent, 55 percent and 15 percent on the basis of the highest aggregate of marks in an integrated or consolidated list of candidates at both the April and August G.C.E. (A.L.) examinations of 1979 and on the basis of the highest aggregate when admitting candidates for the Medical Courses to the Universities for the 1980 Academic Year to fill the number of places open to candidates on the basis of merit and/or on the district quota and/or the under-privileged quota.

I wish to place on record that it was communicated to us by Counsel for the Respondent that on merit basis the petitioner's record of performance in the August examination entitled her to be selected for admission in 1980 to the Medical Course.

The petitioner's application is allowed. The 1st Respondent shall pay the petitioner a sum of Rs. 1,050/' as costs of this application.

ISMAIL J. — I agree.

WEERARATNE J. — I agree.

Application allowed