

Koganti Jayakrishna and anr. Vs. State of A.P. and anr.

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Court : Andhra Pradesh

Decided On : Nov-13-2001

Reported in : 2002(4)ALD389; 2002(4)ALT9

Judge : S.B. Sinha, C.J., ;B. Sudershan Reddy and ;V.V.S. Rao, JJ.

Acts : [Constitution of India](#) - Articles 14, 15, 15(1), 15(4), 16(4), 226 and 371D(1); Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into Under-graduate Professional Courses through Common Entrance Test) Rules, 1993 - Rules 6, 7, 7(6), 7(7), 7(8), 7(10) and 8

Appeal No. : WP Nos. 16015 and 16030 of 2001

Appellant : Koganti Jayakrishna and anr.

Respondent : State of A.P. and anr.

Advocate for Def. : Adv.-General and ;Government Pleader for Higher Education for the Respondent No. 1 in WP No. 16015 and for Respondent Nos. 1 and 2 in WP No. 16030 and ;C. Kodanda Ram, Adv. for Respondent No. 2 in WP

Advocate for Pet/Ap. : S. Sri Ram, Adv. in WP No. 1605 of 2001 and ;Nooty Rama Mohana Rao, Adv. in WP No. 16030 of 2001

Disposition : Writ petitions dismissed

Judgement :

S.B. Sinha, C.J.

1. These two writ petitions are filed by the students who had appeared for the Engineering Agricultural and Medical Common Entrance Test - 2001 (EAMCET-2001) and who are aspiring for admission in engineering courses challenging the order of the Government in G.O. Rt. No.550 Higher Education (EC2) Department dated 30-7-2001 whereby and whereunder the Government in purported implementation of the judgment of this Court dated 23-2-2000 in WP No.26404 of 1999 and WA No.795 of 2000 and batch and in the light of the judgment of the Supreme Court in Ritesh RShah v. Dr. Y.L. Yamul, : [1996]2SCR695, issued the impugned instructions (infra) to be followed in the present EAMCET counselling started from 30-7-2001.

FACTS

2. The petitioners herein had appeared in EAMCET-2001 (Engineering) and secured - 021550th, 04617th, 002168th, 021624th, 013715th, 001480th, 014259th, and 013355th- ranks respectively.

3. Admissions into various Government Engineering Colleges, University Colleges, Regional Engineering Colleges and Private Engineering Colleges are governed by the rules framed by the State in exercise of the power under Sections 3 read with 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short 'the Act') known as A.P. Professional Educational Institutions (Regulation of Admissions into under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 (for short 'the Rules') issued in G.O.Ms.No. 184, Education Department dated 20-8-1993.

4. The Convenor of the Common Entrance Test Committee in terms of the rules is required to prepare 'Statewide common merit list', 'region-wise common merit list', 'minority community merit list', 'caste-wise common merit list' in relation to SC/ST/BCs. At the counselling, each candidate is called for interview in order of merit and is given a choice of institutions and branch depending upon the availability of seats at the point of time with due regard to the eligibility of the

candidates, available seats, local area and reserved category etc. As per Sub-rule 8(a) of Rule 7 of the Rules, admission given to a candidate to a particular college in a branch based upon his option cannot be altered except by the Committee. The rules do not contemplate any situation where a particular candidate belonging to any reserved community if secured a seat under the open category may be permitted to opt for a better course or college based upon his status of belonging to a reserved category which is commonly known as sliding.

5. By reason of the impugned G.O. Rt. No.550, a candidate belonging to a reserved community who had secured meritorious rank and who had chosen a branch or college as per his choice in open competition will be again permitted to slide to any better branch or college under the reserved quota and the resultant seat so vacated by such reserved candidate in the open competition will be treated as seat belonging to reserved communities.

6. The process of counselling has commenced on 30-7-2001 in respect of physically handicapped and others and in respect of open category it had commenced from 5-8-2001.

SUBMISSIONS OF THE PETITIONERS:

7. Mr. Nooty Rama Mohana Rao, the learned Counsel submitted that sliding rule as contemplated by the impugned GO would result in chaos and the entire process of admission in different disciplines in Engineering Courses would be disturbed. The learned Counsel would contend that the seat vacated by a reserved category candidate who for the purpose of giving effect to 'Ritesh Shah" is considered to be open category candidate should be allotted to the next meritorious candidate and not to a reserved category one. If such sliding in terms of the impugned GO the learned Counsel would urge, is permitted, it would lead to preposterous consequences, as, in some cases, the seat vacated by reserved community candidate in open competition would go to a less meritorious person who, perhaps, cannot think of securing any admission in any branch of engineering. Therefore, if the meritorious reserved community candidates who secured admission in open competition are allowed to exercise the option to secure better branch or college in the actual reserved quota, the resultant seat

should be filled up only by next meritorious candidate but not by the next reserved category candidate.

8. It was urged that the impugned order could not be implemented, as it has no statutory force. In the absence of any amendment to the rules, Mr.Rao would argue, the impugned G.O.Rt., cannot be acted upon. He would also submit that the instructions issued in the impugned GO are not workable at all in respect of such courses where there exist various combinations and permutations for a candidate to exercise his choice.

9. It was further argued that there is no rationale in issuing the impugned order as in a given situation the least meritorious reserved category candidates may replace the meritorious open category candidates by application of the impugned instructions and thus the impugned G.O.Rt.No. 550 is liable to be struck down.

10. The learned Counsel would further submit that so far as the process of sliding is concerned, that has been recognised for the first time and such a procedure is not available so far as the regulation of admissions into engineering courses are concerned.

11. However, according to the learned Counsel, the system of sliding is not objected to in the sense that a student, who is represented by social status to any of the three reserved categories, cannot stake a claim.

12. Where each branch of engineering subject is liable to be treated as a course by itself, one cannot imagine that by the generic term all these courses can be called as B.E. engineering course. If the engineering admissions are to be treated as course-wise, the process of admission is to be regulated each course-wise and branch-wise.

13. In support of the said contentions, the Counsel placed reliance on the following decisions:

14. Judgment of the Division Bench of this Court in WA Nos.182 and 236 of 2001 dated 25-4-2001 (P.Gnanesh v. The State of Andhra Pradesh), Gurdeep Singh v. State of Jammu and Kashmir, 1995 Suppl. (1) SCC 188, Ritesh R. Shah v. Dr.Y.L.

Yamul (supra), Ashwin Prafulla Pimpalwar v. State of Maharashtra, 0043/1992 : AIR1992 Bom233 , Y. Raghavendra v. NTR University of Health Sciences, Vijayawada, 1999 (3) ALD 264 (single Judge), NTR University of Health Sciences v. Y. Raghavendra, and P. Chennaya v. Nitesh Naravan, 1998 (3) An.WR 764.

15. Sri Sriram, learned Counsel appearing for the petitioners in WP No. 16015 of 2001 while adopting the submissions of Mr. Rama Mohana Rao, argued that in Ritesh's case (supra), the Supreme Court has dealt with the conditions of admissions in respect of MBBS and BDS courses in the State of Maharashtra. Even the Writ Appeal No.795 of 1999 (NTR University of Health Sciences, Vijayawada v. Y.Raghavendra (supra)) on the basis of which the impugned order was issued also related to the admissions in MBBS course only. Thus, the principles applicable in respect of admissions into medical colleges cannot be applied to admissions into engineering courses due to various combinations and permutations available for a candidate to exercise his choice in engineering stream and the said decision should be applied only in a similarly situated case. In any event, as the Supreme Court in Civil Appeal No.3699 of 2000 filed against the judgment of this Court in WA No.795 of 1999 and batch, while disposing of the appeal left open the question of law, the matter should be considered afresh by this Bench. Once merit is taken as criterion for filling up seats available in open category, he would urge, additional option to reserved categories is inconsistent with Article 15(4) of the [Constitution of India](#). The transfer of a seat vacated by a reserved candidate secured in the open competition to the pool of reserved categories over and above the seats earmarked for such reserved candidates violates Article 14 of the Constitution resulting in reverse discrimination. Mr. Sri Ram has in support of his contentions, relied upon the decisions in State of Bihar v. M. Neethi Chandra, : (1996)6SCC36 , Y. Raghavendra v. NTR University of Health Sciences (supra) and Rajiv Mittal v. Maharshi Dayanand University, : AIR 1998 SC680 .

SUBMISSIONS OF THE STATE:

16. The impugned order has neither changed any rule nor introduced a new rule or a new qualification and it is only classificatory in nature designed to ensure

effective implementation of the rules of reservation and the law declared by the Apex Court. The intention of the Government was to give status of a statutory rule to the instructions in due course as indicated in Para 6 of the order. The instructions are enforceable as they are in not conflict with the rules but merely supplement the same. As per the judgment of the Supreme Court, as student who is entitled to be admitted on the basis of merit though belonged to a reserved category cannot be considered to be admitted against seats reserved for reserved category and the same has been given effect to in the impugned order. The impugned order neither increases nor diminishes the quantum of reservation provided for any particular category including those belonging to open category. The rules do not provide for sliding as contended by the petitioners. Where a reserved category candidate secured a seat on the basis of his merit, his choice of college and course of study cannot be denied, but that seat cannot be counted as against the quota reserved for the category to which he belongs. If the resultant vacancy is filled up by merit candidate without any reference to the reserved category, it would be in violation of the principles enunciated by the Supreme Court in Ritesh Shah's case. The seats secured by reserved category candidates in open competition should be excluded while computing the total number of seats occupied by the candidates belonging to reserved category. The writ petitions are based on mere apprehensions, as the impugned order did not introduce any new rule.

17. The learned Advocate-General would submit that this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) should not interfere keeping in view the fact that the impugned G.O.Rt.No.550 reflects the policy decision of expert academicians. In support of the said contention, reliance has been placed on the decision of the Apex Court in Maharashtra SBOS & H.S. Education v. Paritosh, : [1985]1SCR29 . The learned Advocate-General would further contend that counselling process being relatively new, the matter relating to admission to engineering colleges is a question of policy and in that view of the matter; this Court should not exercise its discretionary jurisdiction. Reliance in this connection has been placed on the decisions of the Apex Court in State of Maharashtra v. Minoo Noazer Kavarana, : [1989]2SCR710 and Preeti Mittal v. Gaganjot Kaur Saira, : [1999]2SCR420 . In a matter of policy, the learned

Advocate-General would urge, the Court would not ordinarily interfere unless the same is ultra vires the Constitution. Strong reliance in this connection has been placed on the decisions of the Apex Court in Ritesh R. Shah 's case (supra), Tata Iron & Steel Company Limited v. Union of India, : AIR 1996 SC2462 and in Delhi Science Forum v. Union of India, : [1996]2SCR767 .

FINDINGS

18. Before 'adverting to the rival contentions as noticed hereinbefore, the preliminary objection raised by the learned Advocate-General may be considered.

19. The submission of the learned Advocate-General to the effect that the impugned order being relatable to policy decision of the State, no interference therewith is permissible cannot be accepted for more than one reason. In the instant case, the legal and constitutional issues are involved. The purported policy of the State is based upon the judgment of the Apex Court. Whether in laying down the purported policy, the judgment of the Apex Court has correctly been interpreted or not is certainly a matter, which comes within the purview of judicial review.

20. Furthermore, it is also not a case where a decision has been taken by an expert body. It is a decision taken by the executive and no expertise is involved therein particularly when the same has been done at the instance of Backward Class Welfare Association. In Maharashtra SBOS & HS Education v. Paritosh (supra), the Apex Court while dealing with a case of Maharashtra Education Board was concerned with a matter relating to violation of principles of natural justice. In that situation, it was observed:

Far from advancing public interest and fair pay to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling

them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problem of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.

21. The reservation policy of the State is not and cannot be a matter of academic expertise. To what extent a privilege can be extended by reason of Affirmative Action would again be an executive policy, which would be justiciable.

22. The question involved herein is the competence of the State to issue administrative instructions when the field is covered by a statute and statutory rules. Such administrative instructions in this case have not only been questioned on the ground that the same is ultra vires Act 5 of 1983 and the rules which have statutory force by reason of Sections 3 and 15 thereof but also runs counter to the principles of reservation as contained in Articles 15(4) and 16(4) of the [Constitution of India](#). Academic policy may not be the subject-matter of judicial review where inter alia a decision is taken by an expert body as regards the standard of education, selection of a candidate, etc. But the question in this case is as to how far and to what extent the privilege of reservation would be extended to a section of people is beyond the pale of judicial review. Similarly, interpretation of a judgment of the Supreme Court and/or its applicability in a fact situation of this nature is a matter before this Court could squarely come within the jurisdiction of Law Courts and not the executive.

23. In *State of Maharashtra v. Minoo Noazer Kavarana* (supra) the matter centered round the admission to medical colleges and in that situation, a question as to whether the Court should interfere with the policy came up for consideration. The Apex Court observed:

It has been strenuously urged by Mr. G. Ramaswamy, learned Additional Solicitor-General appearing on behalf of the State of Maharashtra, that the High Court was not justified in directing that the 30 per cent of seats meant for the candidates outside Bombay to be filled in before the 70 per cent of seats are filled in the local candidates. It may be stated at this stage that by virtue of the judgment in the case of *Nidamarti Maheshkumar v. State of Maharashtra*, : [1986]2SCR230 relating to admission in Medical Colleges in Maharashtra, the State of Maharashtra laid down the policy of regional reservation of 70 per cent of seats for the region of Bombay and the remaining 30 per cent of seats for the candidates outside Bombay but within the State of Maharashtra. It has already been noticed that the High Court is of the view that the 30 per cent of seats should have been filled up first and, thereafter, 70 per cent of regional seats should have been filled up. We have not been able to understand the reason for this view of the High Court. If 30 per cent of seats are filled up first, the candidates who are residing outside Bombay will have to compete with the local Bombay students who are also eligible for admission in the said seats. It may so happen that most of the seats meant for candidates outside Bombay may be filled up by the local Bombay candidates. If, however, 70 per cent of seats are filled up first, by more meritorious Bombay students would be admitted and those, who would not be admitted, would obviously, be candidates obtaining lesser marks and it will not be difficult for the outside candidates to compete with them for the said 30 per cent of seats. The question whether 70 per cent of seats or 30 per cent of seats should be filled up first is a question which should be left to the discretion of the Government. In our opinion, this aspect is not within the purview of the jurisdiction of the Court. We do not find any unreasonableness or impropriety in the State Government's decision to fill up 70 per cent of seats first. The High Court was not, therefore, justified in directing admission on the basis of filling up 30 per cent of seats first and, thereafter, 70 per cent of seats and such direction has created some complications in the matter.

24. Thus, even in that case reasonableness of the decision has been gone into by the Court. The said decision has no application in the instant case.

25. *Preti Mittal v. Gaganjot Kaur Saira* (supra) was a case where the issue involved is selection of candidates for admission into Government Medical College, Chandigarh where two pools i.e., Chandigarh pool and All-India pool exists for selection. The question arose for consideration was whether the Admission Committee was justified in filling up the Chandigarh pool first and in that situation, the Apex Court held that Court would not interfere with the selection process unless there exists strong reasons therefor. As regards the allotment of a seat reserved for SC candidates in All-India pool to a general category of candidate of All-India pool on the ground of non-availability of SC candidates in that pool, the Apex Court held:

Regarding the seat given to the General candidate in the All-India pool by the High Court on the ground that no Scheduled Caste candidate in that pool was available, we are of the view that the High Court was not right in giving that direction. We have already seen that as per Clause (d) of the notification; the candidates from the Chandigarh pool are entitled to compete both for the Chandigarh pool as well as the All-India pool. That being the position, when a Scheduled Caste candidate was not available in the All-India pool and such a candidate is available in the Chandigarh pool that must go to a Scheduled Caste candidate in the Chandigarh pool. The reason given by the High Court that on a reading of Clause 3 of the Clarifications the seat should go to a General candidate in the All-India pool, is based on wrong appreciation of that Clause 3. Clause 3 reads as follows:

If the requisite number of students belonging to Scheduled Caste category are not available, seats thus remaining vacant will be open to students of the General category.

There is no indication that the seat belonging to Scheduled Caste category in a particular pool should go to General category of that pool. Clause 3 generally says that if a Scheduled Caste candidates not available, the seat must go to General category. This Clause read with Clause 4 of the clarifications corresponding to Clause (d) of the notification, will clearly show that if a Scheduled Caste candidate is not available in the All-India pool, that must go to a Scheduled Caste candidate in the Chandigarh pool, if available. Therefore, the High Court was not right in

directing that the seat belonging to Scheduled Caste category in the All-India pool be given to General category in the same pool.

26. In the instant case, no discretion has been conferred upon the committee in the matter of counselling process. The EAMCET Committee, therefore, cannot exercise any discretion.

27. In *Tata Iron and Steel Company Limited v. Union of India* (supra), it was held:

At this juncture, we think it fit to make a few observations about our general approach to the entire case. This is a case of the type where legal issues are intertwined with those involving determination of policy and a plethora of technical issues. In such a situation, Courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy making, unless the policy is inconsistent with the Constitution and the laws. In the present matter, in its impugned judgment, the High Court had directed the Central Government to set up a Committee to analyse the entire gamut of issues thrown up by the present controversy. The Central Government had consequently constituted a Committee comprising high level functionaries drawn from various Governmental/Institutional agencies who were equipped to deal with the entire range of technical and long-term consideration involved. This Committee, in reaching its decision, consulted a number of policy documents and approached the issue from a holistic perspective . We have sought to give our opinion on the legal issues that arise for our consideration. From the scheme of the Act it is clear that the Central Government is vested with discretion to determine the policy regarding the grant or renewal of leases. On matters affecting policy and those that require technical expertise, we have shown deference to, and followed the recommendations of, the Committee, which is more qualified to address these issues.

28. In *Delhi Science Forum v. Union of India* (supra), the Apex Court was considering with a different fact situation. The question involved therein was as regards the power of the Central Government to grant licences to different non-Government companies to establish and maintain Telecommunications System in the country and the validity of the procedure adopted by the Central Government

for the said grant pursuant to Government policy of privatisation of the telecommunications. In that context, the Apex Court held that the Court will interfere in such matters only on being satisfied about bad faith, irrational, irrelevant or ulterior consideration and non-compliance with prescribed procedure in grant of licences and that the onus of proof thereof was on the person questioning the validity of the decision. It was also held that judicial review of a policy decision of Government could be undertaken and examined by the Courts only when there is any legal or constitutional bar in adopting such policy decisions.

29. The said decisions, in my considered view, are not at all applicable to the facts of the present case.

30. It is not a case where the decision of a Selection Committee, which has the expertise in the matter, which the Court does not have, is in question. Even in such a case also the Court can interfere in case of any illegality or patent material irregularity in the constitution of the committee or if it has adopted a procedure which vitiates the selection and on such other grounds.

31. In any event, it is now a well-settled principle of law that even the reasonableness of a policy decision is open to question. Whether a policy decision is ultra vires the provisions of a statute or is otherwise unreasonable so as to attract the principles of *Wednesbury* 's unreasonableness is always a matter for judicial review.

In *Indian Express Newspapers (Bombay) Private Limited v. Union of India*, : [1986]159ITR856(SC) , the Supreme Court held:

A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being

reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say 'Parliament never intended authority to make such rules. They are unreasonable and ultra vires'. The present position of law bearing on the above point is stated by Diplock L. J., in *Mixnam. Properties Limited v. Chertsey U.D.C*, (1964) 1 QB 214 thus:-

'The various grounds upon which subordinate legislation has sometimes been said to be void can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a bye-law is not the antonym of 'reasonableness' in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a Court would say: 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'. If the Courts can declare subordinate legislation to be invalid for 'uncertainty,' as distinct from unenforceable this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain.....' Prof. Alan Wharm in his Article entitled 'Judicial Control of Delegated Legislation: The Test of Reasonableness' in 36 *Modern Law Review* 611 at pages 622-23 has summarised the present position in England as follows:

'(i) It is possible that the Courts might invalidate a statutory instrument on the grounds of unreasonableness of uncertainty, vagueness or arbitrariness : but the writer's view is that for all practical purposes such instruments must be read as forming part of the parent statute, subject only to the ultra vires test.

(ii) The Courts are prepared to invalidate bye-laws, or any other form of legislation, emanating from an elected, representative authority, on the grounds of unreasonableness, uncertainty or repugnance to the ordinary law : but they are reluctant to do so and will exercise their power only in clear cases.

(iii) The Courts may be readier to invalidate bye-laws passed by commercial undertakings under statutory power, although cases reported during the present century suggest that the distinction between elected authorities and commercial

undertakings, as explained in *Kruse v. Johnson*, might not now be applied so stringently.

(iv) As far as subordinate legislation of non-statutory origin is concerned, this is virtually obsolete, but it is clear from *In re French Protestant Hospital* (1951) Ch 567 that it would be subject to strict control.'

See also H.W.R. Wade: *Administrative Law* 5th Edn.) pp. 747-748).

75. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution, In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held in *Tulsipur Sugar Company Limited v. Notified Area Committee, Tulsipur*, : [1980]2SCR1111 *Rameshchandra Kachardas Porwal v. State of Maharashtra*, (: [1981]2SCR866 and in *Bates v. Lord Hailsham of St. Marylebone*, (1972) 1 WLR 1373. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc., etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(IXa) of the Constitution. It cannot, no doubt be done, merely on the ground that it is not

reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

We do not, therefore find much substance in the contention that the Courts cannot at all exercise judicial control over the impugned notifications. In cases where the power vested in the Government is a power, which has got to be exercised in the public interest, as it happens to be here, the Court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution.

32. The doctrine of Wednesbury's unreasonableness has been applied in many cases striking down an executive instruction In *Pennar Delta Ayacutdars Association v. Government of Andhra Pradesh*, : 2000(3)ALD715 , one of us V.V.S. Rao, J., speaking for the Division Bench, has stated the law thus:

It is now well accepted in the field of Administrative Law that administrative action is subject to control by judicial review under three grounds namely, illegality,irrationality and procedural impropriety (*Tata Cellular v. Union of India*, : AIR 1996 SC11).

Illegality, as a ground of judicial review connotes that the decision maker must understand correctly the law that regulates the decision making power and must give effect to it. It is always a justiciable matter whether the decision maker appreciated all the relevant facts and applied the correct law. Irrationality as a ground for judicial review deals with the question whether any sensible person, who had applied mind to the question to be decided could have arrived at the same conclusion. This came to be called as 'Wednesbury unreasonableness' following the doctrine developed in *Associated Picture House v. Wednesbury Corporation*, 1947) 2 All ER 640. Lastly, if a decision is in violation of principles of natural justice and contrary to procedural fairness, such a decision suffers from 'procedural impropriety', which is the third ground for judicial review.

To put it simply, all decisions are not justiciable. All the same in all the jurisdictions it is now well accepted that there is no and there cannot be any unreviewable decision, be it the exercise of sovereign power, be it the exercise of prerogative

power, be it the exercise of legislative powers or police powers or powers of Taxation. All decisions are susceptible for judicial review subject to limitations. In the Indian context, having regard to the unique role assigned to the judiciary, and having regard to the Directive Principles of State Policy, no Court can shrug its shoulders and decline to scrutinise decision including a policy decision. A Constitutional Court, of course may not be inclined to enquire in a roving manner into the circumstances leading to decision. What is the minimum and maximum extent of scrutiny would depend on circumstances of each case.

We, however, hasten to add that all decisions of policy cannot be beyond the plea of controversy, and all controversial policy decisions, which require delicate balancing and consideration of complex social, economic and political parameters cannot be brought under judicial scrutiny through 'judiciary is not myopic¹ and not insensitive to vagaries of individual and national life. It has its own limitations, and therefore, it would not encroach upon the areas exclusively left by the Constitution to the legislative wisdom and Executive expediency. Prof. Bernad Schewartz in his celebrated book, 'Administrative Law' 11th Edition Little Brown Company, 1991, dealing with the present status of judicial review in American context, summarised as under:

If the scope of review is too broad, agencies are turned into little modern media for the transmission of cases to the Courts. That would destroy the follies of agencies, created to secure the benefit of special knowledge acquired through continuous administration in the complicated fields. At the same time, Courts should not rubber-stamp the agencies; the scope of judicial enquiry must not be too restricted that it prevents full enquiry into the action if illegality. If that question cannot be properly explored by the Judge, right to review becomes meaningless.... in the final analysis, the scope of review depends on the individual judges estimate of the Justice of the case. Prof. Clive Lewis in his book 'Judicial Remedies in Public Law' 1992 Edition at p.294-295, summarised the present status of judicial review in English Law as under:

The Court now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. ... Earlier cases took a robust line that the

law has to be observed and the decision invalidated, whatever the administrative inconvenience caused. The Courts now-a-days recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the Court's remedial discretion may prove decisive... They may also be influenced to the extent to which the illegality arise from the conduct of the administrative body itself, and their view of that conduct. It is pertinent to note that Prof. Bernard Schwartz's observations were quoted with approval by the Supreme Court in Tata Celhtar case (supra). In para 89 of the same decision the Court held as follows: Observance of judicial restraint is currently the mood in England. The judicial power of review is exercise to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is that ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.'

33. Having regard to the fact that the petitioners have already appeared in the EAMCET examination and, in the event, the purported executive instructions, which are yet to be incorporated into statutory rules by way of amendment to the rules, are applied, the right of the writ petitioners may be affected, it cannot be said that they have no locus standi to maintain the writ petitions.

34. It may be true that in terms of the aforementioned rules, nobody has any right to be admitted into the course. But, although no student has absolute right to be admitted in a particular course of study, having regard to his performance vis-a-vis the existing statutory rules, he may acquire a right to be considered to get admission in a course of his choice and aptitude when the process of counselling commences. Such a right arises under a statutory rule. Different kinds of rights may, therefore, fructify at different stages. Such accrued rights are sought to be taken away by the impugned instructions of the State and in that view of the matter, this Court, in exercise of its power of judicial review under Article 226 of the [Constitution of India](#), can examine whether the State has exercised its discretion reasonably, rationally and in public interest.

35. The learned Advocate-General himself in his usual fairness stated that the procedure adopted for consideration is complex. It is, therefore, idle to contend that such complex issues are beyond the pale of judicial review. The preliminary objection taken by the learned Advocate-General to the effect that the Court should not entertain the writ petitions must be overruled.

36. How far the decision of the Apex Court in Ritesh Shah's case can be made applicable keeping in the view complex question as regard reservation vis-a-vis sliding down is the principal question which falls for consideration in these applications. Article 15 of the [Constitution of India](#) reads thus;

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintain wholly or partly out of State funds are dedicated to the use of general public.

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

(4) Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes citizens or for the Scheduled Castes and the Scheduled Tribes.

37. Instrumentalities of the State either by legislation, plenary or subordinate or even by executive orders can provide for reservation. The question is no longer res

integra having regard to the decisions of the Apex Court in *Indra Sawhney v. Union of India*, : AIR 1993 SC477 , and *Ajit Singh v. State of Punjab*, : (2000)1SCC430 . In the State of Andhra Pradesh, the question has become more complex having regard to the Presidential Order made under Article 371-D of the [Constitution of India](#).

38. By Constitution (Thirty Second Amendment) Act, 1973, Article 371-D, a special provision with respect to the State of Andhra Pradesh has been inserted in the [Constitution of India](#). Sub-clauses (1), (2) and (10) are relevant for the purpose. They read thus:

371-D. Special provisions with respect to the State of Andhra Pradesh :--(1) The President may by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State:

(2) An order made under Clause (1) may, in particular,--

(a) require the State Government to organise any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organised.

(b) specify any part or parts of the State which shall be regarded as the local area-

(i) for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for direct recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purpose of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

(c) specify the extent to which, the manner in which and the conditions subject to which, preference of reservation shall be given or made-

(i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order, to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respective such cadre, University or other educational institution, as the case may be.

(10) The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding any in any other provision of this Constitution or in any other law for the time being in force.

39. It is not in dispute that the President of India pursuant to or in furtherance of the powers conferred by Clauses (1) and (2) of Article 371-D of the [Constitution of India](#), made the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (Presidential Order) providing for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of admissions to educational institutions which came into force on the 1st day of July, 1974. The said Order provides that the order applies to admissions to every course of study provided by the Universities in the State and all other Educational Institutions which are subject to the control of the State Government, other than Primary and Secondary Schools, Correspondence Courses and Part-time courses of study for the benefit of employed persons. As per para 3, the State has been divided into three local areas, namely, (1) the Andhra University local area, (2) The Osmania University local area and (3) Sri Venkateswara University area for the purpose of admissions into the educational institutions situated in the respective local areas of each of the aforesaid Universities. Para 4 defines a local candidate in relation to local area. As per para 6 of the Order, 85% of the available seats in

every course of study provided by state-wide Universities and State wide educational institutions shall be reserved in favour of, and allocated among, the local candidates in relation to the local areas in respect of the Andhra University, the Osmania University and Sri Venkateswara University, in the ratio of 42:36: 22 (being the approximate ratio of population of these areas). The balance of 15% of the available seats in both State-wide and non-State-wide institutions are left unreserved. As per para 9 of the Presidential Order, the Order has overriding effect over any statute, ordinance, rule, regulation or other order in respect of admissions in force. In pursuance of the said order comprehensive instructions have been issued in G.O.P.No.646, dated 10-7-1979.

40. The State enacted A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 ('the Act' for brevity) in order to prohibit the collection of capitation fee in the State of Andhra Pradesh and to avoid frustration among the meritorious and indigent students and maintain excellence in the standards of education. As per Section 2(c), 'Educational Institution' means a college, a school imparting education up to and inclusive of tenth class or other institution by whatever name called, whether managed by Government, private body., local authority or University and carrying of the activity of imparting education therein, whether technical or otherwise, and includes a Polytechnic, Industrial Training Institute and a Teachers' Training Institute, but does not include a tutorial institution. Section 3 provides for regulation of admission into Educational institutions. Section 3(1) provides that admission into Medical and Engineering Colleges are required to be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as maybe prescribed. Sub-section (2) of Section 3 provides that admission under Sub-section (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in that behalf and as provided in the Presidential Order. Section 15 of the Act provides for the rule making power in terms whereof the Government may make rules for carrying out all or any of the purposes of the said Act.

41. In *Unnikrishnan v. State of Andhra Pradesh*, : [1993]1SCR594 , Supreme Court evolved a scheme in relation to regulation of admission of students into various educational institutions taking note of the fact that private educational institutions, in the present day context, are in necessity as the Government is in no position to meet the demand particularly in the medical and technical educational sector which calls for substantial outlays. The State has no monopoly therein and the private educational institutions have a role to play in the matter. By reason of the judgment, of the Apex Court in *Unnikrishnan* 's case, a student can have a chance of opting either for a free seat or for a payment seat in a private educational institution.

42. By reason of G.O. Ms. No. 184, Education (EC2) dated 20-8-1993 the State in exercise of the powers conferred by Section 3 read with Section 15 of the Capitation Fee Act, made the EAMCET Rules. 'Common Entrance Test' has been defined in Rule 2(d) to mean the examination conducted for assigning merit ranking to students, which will be the basis for admission of the student into the first year of various Under-Graduate Courses in various Professional Educational Institutions in the State. Section 2(h) defines 'free seats' to mean 50% seats in Private Professional Institutions in respect of which the fee payable shall be the same as the fee payable in the Government/University Engineering Colleges, medical/Dental Colleges of the respective University area of the State of Andhra Pradesh. 'Local area' as per Section 2(k) is defined to mean the territorial jurisdiction prescribed for identifying the local candidates. Section 2(i) defines 'Local candidates' to mean the candidates in relation to the local area as specified in Rule 8. 'Non Resident Indians (NRIS)' as per Section 2(m) is to mean Non-Resident Indians as defined by Reserve Bank of India, Section 2(n) defines 'Payment seats' to mean the other 50% seats in Private Professional Institutions excluding the 'Free Seats' defined in Clause (h). Clause (O) of Section 2 defines 'Qualified Candidate' to mean the candidate who has appeared for the Common Entrance Test and has been assigned ranking in the Common Merit List. Section Clause (p) defines 'Qualifying examination' to mean the examination of the minimum qualification prescribed appearance/passing of which entitled one to see admission into the relevant professional course.

43. Rule 3 provide for method of admission, in terms whereof general guidelines for the admission of the students into various 1st year Under-graduate professional educational institutions have been laid down. Clause (a) of Sub-rule (1) provides that the admissions shall be made in the 6rder of merit on the basis of the ranking assigned to the students in the Common Entrance Test called the 'Engineering, Agricultural Sciences and Medical Common Entrance Test (EAMCET) conducted for the purpose. In terms of Sub-rule (2) of Rule 3, the Principal of Private Professional Institutions shall admit candidates as allotted by the 'Convenor of Committee for admissions' as defined in Rule 2(gg) in terms of Rule 7. Sub-rule (3) prohibits admission into private educational institutions excepting the limit prescribed by the Government. Rule 4 provides for eligibility criteria for admission. Rule 5 provides for the Common Entrance Test to be conducted by the University selected by the A.P. State Council of Higher Education. For conducting such tests, an advertisement is required to be issued in the popular daily newspapers. The Chairman is required to conduct the entrance test within fifteen days from the last date of Intermediate examination by announcing the dates and centres therefor. The said rule provides for the subjects in which examinations are to be taken and the purpose therefor. It also provides the details of the courses, the University offering and the subject to be chosen for appearing the test seeking admission into the courses. Rule 6 provides for preparation of merit list and assigning ranking. It provides for preparation of common merit lists, State-wide, Region-wise, caste-wise and separate list for minority community-wise. Rule 7 provides for procedure for admission into Government/ University Professional Colleges/Regional Engineering Colleges and Private Professional Colleges. Rule 7 so far as it is relevant for the purpose reads as follows:

(5) The seats in all the Private Professional Institutions shall be pooled up Course-wise and distributed among the three local areas of the State specified in Sub-rule (1) of Rule 8 namely, Andhra University Area (Andhra), Osmania University Area (Telangana) and Sri Venkateswara University Area (Rayalaseema) in the ratio of 42:36:22 respectively and 50% of the polled up seats shall be 'Free seats' and the balance of 50% of The seats shall be 'Payment Seats'. 10% 'Payment Seats' (i.e., 5% of total intake) in each branch shall be reserved for Nonresident Indians

(NRIs).

(6) Candidates who have secured higher ranks at the Entrance Test will be called for an interview in the Order of merit for selection and allotment of Course/Branches/Institutions. For the convenience of the candidates, representatives of all University Professional Colleges, Regional Engineering College, Warangal and Private Professional Colleges in the State shall sit at a common table. As and when each candidate gets his turn for interview in the order of merit, choice of Institutions and Branch (Course of study) will be given to him, depending upon availability at the point of time with due regard to the eligibility of the candidate for a seat in a particular local area for a particular reserved category,

(7) The selection of candidates and allotment of Courses/Institutions in respect of University Professional Colleges, Regional Engineering Colleges and Private Professional Colleges shall also be solely on the basis of merit as adjudged by the rank obtained in the Entrance Test subject to the condition that the candidate should have passed the qualifying examination with the minimum marks prescribed for the Entrance Test. However, mere appearance at the Entrance Test and obtaining high rank in the merit list does not entitle a candidate to be considered for admission automatically into any course/ Branch/Institution unless he also satisfies the Rules and Regulations of Admission prescribed by the concerned University/ Government including marks to be obtained in the qualifying examination.

(8) The Convenor of Committee for admissions shall select and allot the candidates for admission into various courses in University Professional Colleges, Regional Engineering Colleges and 'Free Seats' in Private Professional Colleges simultaneously on the basis of the ranking assigned to them in the Entrance Test. It shall be open to a higher ranking candidate to opt for a 'Payment seat'.

8-A. Once a candidate secures admission to a particular college/institution based on his option no more claim for admission into other colleges, to say other kind of seat to any other branch, be entertained except as provided by the committee for admissions.

(9) The seats reserved for Non-Resident Indians (NRIs) shall be filled by the respective managements by following the criteria as laid down by the Government from time to time. The management shall intimate the Competent Authority or Authority or Officer nominated by Competent Authority about the left over seats reserved by NRIs, if any, well in advance before the commencement of admissions to be made for 'payment seats' by competent Authority or Authority or officer nominated by Competent Authority to fill up such left over NRIs seats treating them as 'Payment Seats'.

(10) The Competent Authority or convenor of Committee for Admissions shall give at least ten days time to all the candidates after the 'Free seats' in-Private Professional Institutions are filled up to opt to be admitted against the 'payment seats' so that the candidate shall deposit the fees in the Bank for the academic year in favour of the competent authority who shall transfer the same in favour of the appropriate college,

44. Rule 8 provides for reservation. Sub-rule (1) provides for Region-wise reservation of seats. Sub-rule (1) reads as follows:

Rules of reservations of admission :--They shall apply to all institutions including Private Professional Institutions both for 'Free seats'and ' Payment seats' subject to the modification mentioned in the Sub-rule (15) of Rule 7 in respect of Non-Resident Indians (NRIs).

(1) Region-wise reservation of seats:

(a) Admission to 85% of the seats in each course, excluding the seats which are exempted from the need of Common Entrance Test, shall be reserved for the local candidates and 15% of the seats shall be left over for Open Competition as specified in the A.P. Educational Institutions (Regulations and Admission) Order, 1974 as amended in G.O.P.No.646, Education (W) Department dated 10-7-1979.

(b) In respect of State-wide institutions and State-wide Universities admission into 85% of seats, excluding the seats which are exempted from the need of Common Entrance Test, in each course, shall be reserved for the candidates belonging to

the three local areas in the State specified in this sub-rule namely, Andhra University Area (Andhra), Osmania University Area (Telangana) and Sri Venkateswara University Area (Rayalaseema) in the ratio of 42:36:22 respectively and the balance of 15% seats shall be left for open competition.

(c) The seats in all the Private Professional Colleges shall be pooled up course-wise and distributed among the three regions of the State namely, Andhra University Area (Andhra), Osmania University Area (Telangana) and Sri Venkateswara University Area (Rayalaseema) in the ratio of 42:36:22 respectively as provided under Sub-rule (5) of Rule 7.

45. Sub-rule (2) of Rule 8 provides for reservation of seats for SC/ST/BC communities. Clause (a) thereof provides that 15% and 6% of seats in each course in each institution shall be reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes respectively. Clause (b) provides that 25% seats in each course in each institution shall be reserved for the candidates belonging to the Backward Classes and shall be allocated among the groups A, B, C and D at 7%, 10%, 1% and 7% respectively. Sub-rule (3) of Rule 8 provides for reservation of seats for women and Sub-rule (4) provides for reservation to other categories such as handicapped, National Cadet Corps, Children of Ex-Servicemen etc.

46. In the aforementioned backdrop, the relevant executive instructions contained in the impugned Government Order as quoted earlier have to be considered.

47. The following chart containing the rules issued in G.O.Ms.No. 184 dated 20-8-1983 and the executive instructions issued in the impugned G.O.Rt.No. 550 Higher Education Department dated 30-7-2001, in the context is relevant to know how the competent authority under the Rules has to take up the scheme of admission into Under-Graduate Engineering courses.

EAMCET Rules issued in G.O.Ms.No.184 Education (EC2) Department dated 20-8-1993 with amendments from time to time. Instructions issued in the impugned G.O.Rt.No.550 Higher Education (EC2) Department dated 30-7-2001.

RuleContent of the Rule Sub-Rule

3 Method of admission1(a):admissions shall be made in the order of merit on the basis of the rankingassigned in EAMCET.

6 Preparation of merit listand assigning of rankings

Sub-rule (1): Preparation of State-wideCommon merit lists,

Region-wise Common Merit Lists, MinorityCommunity Merit list. Caste-wise CommonMerit Lists. In respt of Caste-wise CommonMerit lists, separate merit lists for SCs, STsand each group of BCs both as State-wiseand Regiofvwise have 10 be prepared. Meritlist for other categories of reservation suchas for physically handicapped. Games andSports etc.

7 Procedure for admission in to Government/University Collegesand Private Professional Institutions.

Sub-rule: After scrutinising theapplications of all the eligible candidatesdesirous of seeking admission, thecompetent authority besides the meritlists referred to in sub-rule (1) of Rule 6, shallprepare two categories of merit lists: CommonMerit List: Containing the names of thecandidates arranged in the order of meritranking assigned. Category-wise Merit List:Containing the names of the candidatesbelonging to the concerned categoriesarranged in the order of merit ranking assigned.

Sub-rule (5): The seats in all the PrivateProfessional Institutions shall be pooled upcourse-wise and distributed among the threelocal areas in the ratio of 42:35:22respectively. 50% of the pooled up seatsshall be Free Seats and the balance 50%shall be payment seats. 10% payment seats(i.e, 5% of total intake) ineach branch shallbe reserved forNon-resident Indians (NRIs.)

Sub-rule (6): Candidates who have securedhigher ranks will be called for an interviewin the order of merit for selection andallotment of course/branchesfInstitutions.As and when each candidate gets his turnfor interview in the order of merit, choice ofInstitutions and Branch (Course of

study!will be given to him, depending upon availability at the point of time with regard to the eligibility of the candidate for a seat in a particular local area for a particular reserved category.

1. In the counselling process, the seats to be filled by open competition should be filled up first, wherein the candidates should be called for counselling based on merit alone irrespective of whether they belong to SC, ST, BC in accordance with the instructions issued by the Government in G.D.Ms. Nb.996, Employment & Social Welfare, dated 11th November, 1975.

2. Next, reservation categories like SC, ST, BC candidates will be counselled to fill up the seats earmarked for them in their respective categories. During this process, if a candidate belonging to Scheduled Caste/Scheduled Tribe, Backward Classes who had taken admission under open competition under open competition, opts for a better branch or a better college of his choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open competition shall be filled with the candidate from the same reservation category only, in order of merit.

Sub-rule (7) : The selection of candidates and allotment of courses/Institutions in respect of University Professional Colleges, RECs and Private Professional Colleges shall be solely on the basis of merit as adjudged by the rank obtained in the Entrance Tests subject to...

Sub-rule (8): The competent authority shall select and allot the candidates for admission into various courses in University Professional Colleges, Regional Engineering Colleges and the Free seats in Private Professional Colleges simultaneously on the basis of the ranking assigned to them in the entrance test. It shall be open to a higher-ranking candidate to opt for a payment seat.

Sub-rule 8-A: Once a candidate secures admission to a particular College Institution based on his option no more claim for admission into other colleges, to any other kind of seat, to any other branch be entertained except.

Sub-rule (9): The seats reserved for NRIs shall be filled by the managements by following the criteria as laid down by the Government from time to time. The management shall intimate the Competent Authority about the left over seats reserved for NRIs, if any well in advance before the commencement of admissions to be made for payment seats to enable the competent authority to fill up such left over NRI seats treating them as payment seats.

Sub-rule (10): The competent authority shall give at least ten days time to all the candidates after the free seats in Private Professional Institutions are filled up to be admitted against the payment seats....

Sub-rule (11): The competent Authority shall select and allot the candidates for admission into various courses for the payment seats in private Professional Institutions as per merit from among the applicants who have exercised their option prescribed in sub-rule (10).

8 Rules of reservations for admissions:-

Shall apply to all institutions including private institutions both for free seats and payment seats.

(1) Region-wise reservation of seats: 85% of the seats in each course, excluding the seats which are exempted from the need of entrance test, shall be reserved for the local candidates and the remaining 15% of seats shall be left over for open competition, as specified in the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974 as amended in G.O.P.No.646 Education (W) Department dated 10-7-1979.

(2) Reservation of seats for SC/ST/BC communities : (a) 15% and 6% of seats in each course in each institution shall be reserved for the candidates belonging to the SCs and STs respectively.

(b) 25% seats in each course in each institution shall be reserved for the candidates belonging to the Backward Classes and shall be allocated among the group of BCs at 7%, 10%, 1% and 7% respectively.

(3) Reservation of seats for Women :30% of theseats in each course in eachinstitution shall be reserved in favour ofwomencandidates from each category i.e..OC,SC, ST BC-A B, C, D and army quota,NCC, PH and Games and Sports.

(4) Other categories of reservation : Seatsshallalso be reserved in each branch of aninstitutionin respect ofphysicallyhandicapped, NCC, Games and Sports,children of Ex-Servicement etc.

48. The Convenor, EAMACET-2001 issued Notification on 24-7-2001 giving the programme schedule commencing from 30-7-2001 for the Phase-1 counselling in respect of Physically handicapped persons, children of armed personnel and openCompetition categories, Clause 3 of Note thereunder reads as follows:

A separate schedule for the counselling of candidates in reserved categories (BC/SC/ ST) will be announced after filling the Open Competition seats. However, the candidates under reserved categories appearing in the ranks called above on their merit are advised to come for counselling and take the seats available to them. After the counselling for reserved category is commenced, the candidates under reserved categories who appear for counselling for open competition seats will be again entitled to appear for the counselling and permitted to change their preference for any other set that they like to opt for in reserved category. Such changes will be flowed without any extra fees for counselling. The open competition seats that my fall vacant as a result of these changes will also be offered for counselling in the respective reserved categories in pursuance of the judgment of Hon'ble Supreme Court in Ritesh R. Shah case in WP No.693 of 1995. A detailed procedure in this regard will be notified in due course at the time of counselling for reserved categories.

49. The said rules, therefore clearly reveal that a detailed procedure has been laid down therein as to how and in what manner the mode of selection of candidates is to be commenced and admissions of students into various first year Undergraduate courses in various professional Educational Institutions in the State are to be completed. The authorities named therein being statutory authorities are required to follow the said provisions and rules strictly.

50. The rival contentions are required to be considered having regard to the aforementioned materials.

51. The field is covered by a statute and the statutory rules. When the field is covered by statutory provisions, the State cannot be permitted to inter-meddle and issue executive instructions which does not supplement but supplant the same. It is not in dispute that in the event executive instructions are implemented, the statutory rules framed by the State are required to be given a go-bye because both the executive instructions and the statutory rules cannot stand together. There cannot, therefore, be any doubt whatsoever that in law statutory rules must prevail over the executive instructions in such matters. The State does not dispute this position, as it stands admitted that the rules are required to be amended. Such amendments are yet to be made.

52. Once the executive instructions are given effect to, the procedure laid down in Rule 7 while implementing 'sliding down' rule must be given a completion go by. Both cannot stand together. The right of consideration of OC candidates who is more meritorious would be infringed for the benefit of a reserved category candidate who is less meritorious. This in the considered opinion of this Court cannot be done.

53. In the aforementioned situation, the State must be held to have exceeded its jurisdiction in issuing the executive instructions. This aspect of the matter has recently been considered by the Supreme Court in *Krishna Prakash Sharma v. Union of India*, 2001 SCC (L & S) 805, wherein it was observed:

When the Constitution entrusts the duty of law making to Parliament and the Legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority.

54. It is well settled principle of law that the executive instructions can be issued only in absence of statutory rules or to fill up the gaps where there is ambiguity or to supplement the same but not to supplant them. Here in the State already there exists a reservation policy in terms of statutory rules governing the scheme of admission in to engineering under-graduate courses. When the policy of

reservation was made in terms of statute, the same, in my considered opinion, cannot be permitted to be altered by executive instructions. What cannot be done by the State in exercise of its rule making power, it is trite that it cannot do by issuing executive instructions. In *J & K Public Service Commission v. Dr. Narinder Mohan*, : (1994)ILLJ780SC , the Apex Court reiterated the principle that the executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law.

55. In *Supreme Court Employees' Welfare Assn v. Union of India*, , it has been held:.....(A) delegated legislation or a subordinate legislation must conform exactly to the power granted.

Rules, whether made under the Constitution or a statute, must be *intra vires* the parent law under which power has been delegated.

56. In *Consumer Action Group v. State of T.N.*, : AIR 2000 SC3060 , it has been held:

Whenever any statute confers any power on the statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test of judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power. The question is whether the power has been exercised validly by the delegatee, in the present case; if yes, then it can only be for the furtherance of that policy. What is that policy? The policy is the development and use of rural and urban land including construction of colonies, building, etc., in accordance with the policy of the planning as laid down under the Act and the Rules. When such a wide power is given to any statutory authority including a delegatee then it is obligatory on the part of such authority to clearly record its reasons in the order itself for exercising such a power. Application of mind of such authority at that point of time could only be revealed when the order records its reasons. Even if the section is silent about recording of reasons, it is obligatory on the Government while passing orders under Section 113 to record the reasons. The scheme of the Act reveals, the Government is conferred with

wide-ranging power, including power to appoint all important statutory authorities; appoints Director and members of town and country planning under Section 4; constitutes Tamil Nadu Town and Country Planning Board under Section 5; the Board to perform such functions as the Government assigns under Section 6; appoints Madras Metropolitan Development Authority under Section 9-A; the Government entrusted for making master plan or any other new plan; any plans or modifications is subject to the approval of the Government. In fact, every statutory committee is created by the Government and its planning is subject to the approval by the Government. It is because of this that very wide power is given to it under Section 113. In a given case, where a new development in a rural or urban area may be required urgently and provisions under the Act and Rules would take a long procedure, it may in exercise of its exemption power exempt some of the provisions of the Act and Rules to achieve the development activity faster or in a given case, if any hardship arises by following or having not followed the procedure as prescribed, the power of exemption could be exercised but each of these cases would be for furtherance of the development of that area.

57. The above decision has been referred to it) a Full Bench decision of this Court in C.V. Ratnam v. Union of India, : 2001(6)ALD35 .

58. In 'Principles of statutory interpretation', Seventh Edition, 1999, by Justice G.P. Singh, it has been stated:

There is a strong presumption that civil Courts have jurisdiction to decide all questions of civil nature. The exclusion of jurisdiction of civil Courts is therefore not to be readily inferred and such exclusion must either be 'explicitly expressed or clearly implied'. It is a principle by means to be whittled down and has been referred to as a fundamental rule. As a necessary corollary of this rule provisions excluding jurisdiction of civil Courts and provisions conferring jurisdiction on authorities and Tribunals other than civil Courts are strictly construed. The existence of jurisdiction in civil Courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of jurisdiction of civil Courts is not to be readily

inferred is based on the theory that civil Courts are Courts of general jurisdiction and the people have a right unless expressly impliedly debarred, to insist for free access to the Courts of general jurisdiction of the State. Indeed, the principle is not limited to civil Court alones, but applies to all Courts of general jurisdiction including criminal Courts.

59. In *V. Sudeer v. Bar Council of India and Anr.*, 1999 (2) Supreme 460, it has been held:.....the rule making power entrusted to the Bar Council of India by the legislature is an ancillary power for fructifying and effectively discharging its statutory functions laid down by the Act. Consequently, Rules to be framed under Section 49(1) must have a statutory peg on which hang. If there is no such statutory peg the rule which is sought to be enacted de hors such a peg will have no foothold and will become still born..... Any rule framed by rule making authority going beyond its statutory functions must necessarily be held to be ultra vires and inoperative at law.

60. What is true for the law applicable as regards the rule making power applies on all fours to executive instructions. The executive instructions must not only satisfy that the same has been issued in terms of the Act but also is in consonance with the principles laid down in the rules.

61. In terms of Article 371-D of the [Constitution of India](#), reservations are required to be made region-wise. 54% seats are to be filled up from open category and 46% seats are to be filled from the reserved category of candidates. It is not dispute that those reserved category candidates who complete with open category candidates are entitled to be treated as such. However, reservation being in addition to merit, whenever reservation is provided the principles of sliding down may be applied. In that sense, it is not communal reservation.

62. For the purpose of quota the reserved candidates who successfully compete with the open category candidates although be treated as open category candidates, in view of the decision of the Apex Court in Ritesh Shah's case the rules of sliding down has become permissible.

63. The fact of the matter involving Ritesh Shash's case may be noticed. This case relates to selection and admission of candidates to MDBS and BDS course for the year 1995-96 in the State of Maharashtra. The rules relating to selection of MBBS course and BDS course framed by the Government of Maharashtra provides that 15% of the seats shall be earmarked for the candidates who come through All India Competitive Test to be allotted by the Government of India. Out of the remaining 85% seats, 50% are kept reserved for different reserved categories and 50% remained for open market in accordance with merit. From out of open market seats, 30% are distributed among the State-level candidates and 70% in the regional level. While considering the candidates at regional level, option is asked for from the candidates individually of their choice and then allotment is made. The regional merit list includes both open and Backward Class candidates and they will be called for interview first for exercising the option for allotment of seats. Those belonging to the reserved categories of Backward Class will be called for selection subsequently against the seats reserved exclusively for the Backward Class applicants. After the selection, the designated authority will prepare the regional final merit list and sent to the competent authority who will carry out selection to the 70 per cent seats of the recognised medical colleges by operating the said regional final merit list as per the merit and availability of a set as per the choice order of the applicants.

64. The petitioner before the Supreme Court as well as respondents 5 to 36 therein belongs to the reserved category candidates. The case of the petitioner was that respondents 5 to 36 belonging to the reserved category though could have been admitted on the basis of marks secured in open merit, yet they were admitted as against the reserved category and as a result he was excluded from getting admission into the MBBS course. The stand of the State Government was that if the respondents were allowed to take admission in open market then it will work out gross injustice and will be more harsh to them as they cannot get admitted to the colleges of their choice even though they have secured much higher marks than the other reserved category candidates and the candidates securing lower marks will get the premium of being admitted to the colleges of their choice. On these facts, the Apex Court held that the candidates belonging to reserved category who could be admitted on the basis of open merit, should be

treated only as open category candidates for the purpose of computing percentage of reservation, but they should be given option for admission to the course in colleges where seats are kept reserved for reserved category and thereafter less meritorious reserved category candidates should be considered for admission in whichever colleges reserved seats are available. It was held:

It is while considering the candidates at Regional level, option is asked for from the candidates individually of their choice and then allotment is made. Therefore, at that stage if a candidate belonging to the reserved category is considered by virtue of his merit and is admitted, then it is just possible he may not be admitted to any Government colleges and would be admitted into a private college whereas as against the 50% seats reserved for reserved category, persons down below the list belonging to the reserved category, will be admitted and undoubtedly this will cause undue hardship to the meritorious candidates amongst the reserved category and will be a premium for the less meritorious candidates amongst the reserved category.

There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the Constitutional mandate enshrined in Article 16(4)

65. In *Ritesh Shah* a right existed in favour of a reserved category candidate who is more meritorious than the other candidates belonging to the same category, although for the purpose of reservation, he may be held to be a 'open category candidate'.

66. Having regard to the decision in *Indra Sawhney v. Union of India* (supra), *R.K. Sabbharwal v. State of Punjab*, : [1995]2SCR35, *Union of India v. Virpal Singh Chauhan*, : AIR 1996 SC448, *Ajay Kumar Singh v. State of Bihar*, : [1994]3SCR57, the Supreme Court in *Ritesh Shah* held:.. a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to

the disadvantage of such candidates and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not a reserved category candidate.

67. The rule of sliding down, therefore, would have a limited role to play, which cannot act in derogation to the interest of a more meritorious open category candidate.

68. In *NTR University of Health Sciences v. Y. Raghavendra* (supra), a Division Bench of this Court held:

In a situation like this, all that the Court can say is, if the authorities want to allow the student already admitted under open competition category allow them to prosecute their studies at the same time comply with the orders of this Court made in earlier writ proceedings. The selection shall be on the basis of local area or University-wise. If increasing of intake is necessary, the authorities may make a request to the concerned authorities to increase the intake as they did earlier or replace the less meritorious open category candidates by admitting the meritorious Backward Class, Scheduled Caste and Scheduled Tribe students. Further, fix the meritorious BC, SC and ST category students strictly adhering to the principles laid down by the Supreme Court in the *Ritesh R. Shah's* case (supra) and the rules referred above, namely accommodate meritorious students belonging to SC, ST and BCs. While so doing if the other students, allotted in the OC category are to be deleted one cannot escape from the same. The petitioners are entitled by virtue

of the ranking for admission under OC category to the college of their choice and they shall be admitted within two weeks from the date of this order. They are entitled for condonation of shortage of attendance. The resultant equal number of vacancies shall be filled up by drawing the candidates belonging to the Backward Class, Scheduled Caste and Scheduled Tribe communities who will be next eligible.

69. The University carried the matter before the Supreme Court in Civil Appeal No.3699 of 2000 wherein the Supreme Court did not interfere in the matter on the ground that the students had been admitted to the respective colleges as directed by the High Court and, therefore, no useful purpose would be served by examining the contentions urged before it. However, the questions of law were left open. This Court has, therefore, been called upon to consider the said question.

70. The question which has been raised in these petitions is as to whether the principles laid down therein may be applicable to engineering courses as the same relate to MBBS course where the chances of making option to different subjects is not applicable. In engineering courses, it is a continuing process. One is required to wait till the entire process is crystallised. In terms of the impugned rules, it will be a continuous process. One has to wait for a long time and rights of the students to opt for admission in a course would not be cleared unless the process is crystallised. If even thereafter, the process has to be reversed, the same may not be in public interest. The academic schedule may get disturbed and it may involve third party interests.

71. In *State of Maharashtra v. Minoo Noazer Kavarana* (supra) 70% of seats wererequired to be filled up first from local candidates. Here also 85% will have to be filled up first from the local candidates.

72. *State of Bihar v. M. Neethi Chandra*, : (1996)6SCC36 , is a case where somewhat similar facts arose for consideration before the Apex Court. This case relates to admission of students to post-graduate courses in various Medical Colleges in the State of Bihar. The Government of Bihar published a resolution dated 7-2-1992 stating that the candidates belonging to reserved classes who are selected on the basis of merit for admission into professional training institutes

would not be adjusted against reserved seats. This has led to a situation where the reserved category candidates who could qualify on merit on par with general category candidates could be allotted to course/college which were not of their choice, evidently, because of their low position in their merit whereas such a choice of college/course was available to candidates qualified for the reserved seats although they were lower in merit position. The High Court of Patna devised a method of allotment of seats by which the reserved seats are offered first (i.e., Before the general seats are filled) to the candidates of the reserved category on merit and after all the reserved seats are so filled up, all other qualifying candidates of the reserved category are 'adjusted' against the open seats in the general category along with the general merit candidates and offered seats on merit-cum-choice basis. Observing that the method evolved by the High Court is not in tune with the principles of equality, the Apex Court held:

At the same time, as pointed out above, all is not well with the Government Circular No.20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of Circular No.20 is to give full benefit of reservation to the candidates of the reserved categories. However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject.

73. In terms of the aforementioned decisions, an in built option in the entire process must be presumed.

74. Neethi Chandra's case, in my opinion, applies in this case.

75. In *Rajiv Mital v. Maharshi Dayananda University* (supra) the Apex Court was dealing with the admission of reserved candidates into Rohtak Medical College, Haryana. There are 60 seats in the College, 49 were reserved for open category and 11 for Backward Class candidates. One Sri Sunil Yadav, a reserved candidate belonging to the backward class secured first position for reserved category in the

entrance examination and 62nd position in the general category. In the first counselling held for general category he could not get the seat, but in the reserved category he secured seat. Another reserved category who could not secure a seat invoked the writ jurisdiction contending that he would have secured admission if Sunil Yadav had been adjusted against general category in the second counselling held for general category candidates. In that context, the Apex Court held:

The system of counselling for the purpose of granting admission to the various medical colleges in the State is now regarded as most equitable one where options are given of various seats to the students in accordance with their overall merit position in the combined entrance examination, which examination is competitive in nature.....Theaforesaid Note 2 has not been correctly construed by the High Court. This note, in a case like the present, will have application only when a reserved category candidate is in a position to secure, and secures admission to a seat in the general in the same counselling in which seat is available to him in the reserved category.....As the aforesaid Note 2 was not applicable to a case like the present, where Sunil Yadav having failed to secure admission to a seat in the open category in the first counselling for that category but had secured admission to the reserved seat in the same counselling, the question of his being shifted or being regarded as a candidate to the open category seat which had become available only after he had secured admission did not and could not arise and, consequently, the appellant was rightly granted admission to the general category seat in the Rohtak Medical College.

76. Exercise of such options having regard to the scope thereof must be Procedured at two different stages as provided for in the said rules. A privilege may be granted to reserved category candidate who has competed with the open category having regard to the decision in Ritesh but the same does not mean that the executive will overstep its limits and issue executive instructions, which will supplement the rules and not supplant the same. The statute and the statutory rules govern the rights of the students. The Presidential Order also governs the rights of the students. There cannot be any doubt that while implementing a decision of the Supreme Court, the State would be entitled to issue a direction, which would be in consonance therewith. However, by reason of an executive

direction it cannot create a right in somebody to which he or she is not entitled to nor can it take away a right to which a student has become entitled to by reason of his performance in EAMCET. The right of any student to get a seat or opt for one course of study may not be absolute. But such rights, however, as noticed hereinbefore, accrue at different stages of selection process.

77. Rules have been framed keeping in view the delicate balance, which is required to be maintained having regard to zone-wise reservation made in terms of the Presidential Order vis-a-vis the State policy of affirmative action.

78. The right to opt to a particular course of study is also a right under the rules. A student cannot be deprived of such right by reason of an executive direction. In *Sant Ram v. State of Rajasthan*, AIR SC 1967 1910, the Apex Court has categorically held that Government cannot amend or supersede statutory rules by administrative instructions and it is only where the rules are silent on any particular point, it can fill up the gaps and supplement the rules by way of instructions not inconsistent with the rules already framed.

79. As already noticed herein above, the statutory rules do provide the guidelines as regards the admission of general category candidates and the reserved category candidates. If the impugned executive instructions dated 30-7-2001 are to be given effect to, the same, in our opinion, would confer an additional right upon the reserved category of candidates, which did not exist when the recruitment notification was published.

80. In a case of this nature, the doctrine of legitimate expectation would also apply. The rules, which were applicable at the time of issuing the notification, should prevail. The students may have to choose their line of action upon the advertisement issued at different stages and may also have to apply to different Universities. Even in case where the students have succeeded in more than one entrance examination, having regard to the ranking secured by them in the State have a legitimate expectation that the rules will be followed, they may give up one offer made by another University and cling to the EAMCET examination in the State of A.P. The State cannot surprise a student at the stage of counselling by issuing executing instruction, which would violate the doctrine of legitimate

expectation.

81. In Wade and Forsyth 's Administrative Law, 7th Edn, it is stated:--

'Claims based on legitimate expectation have been held to require reliance on representation and resulting detriment to the claimant in the same way as claim based on estoppel. The argument under the label estoppel' and the 'legitimate expectation' agreement are substantially the same. In this conflict of doctrines the demands of fairness are proving the stronger. But those demands cannot be pressed to the point where they obstruct changes of policy which a Government should be at liberty to make within its discretionary power or legitimate practices such as selective prosecution of tax offenders by the Inland Revenue.'

In R.V. Board of Inland Revenue, ex parte MFK Underwriting Agencies Limited reported in 1990 (1) All ER, 91, Bingham LJ and Judge, (speaking for the Queen's Bench Division) held:--

'In so stating these requirements, I do not, I hope, diminish or emasculate the valuable developing doctrine of legitimate expectation. If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. The doctrine of legitimate expectation is rooted in fairness. But fairness is not a one way street. It imports the notion of equitableness, of fair and open dealing, to which the authority is as much entitled as the citizen. The Revenue's discretion, while it exists, is limited. Fairness requires that its exercise should be on a basis of full disclosure. Counsel for the applicants accepted that it would not be reasonable for a representee to rely on an unclear or equivocal representation. Nor, I think, on facts such as the present, would it be fair to hold the Revenue bound by anything less than a clear, unambiguous and unqualified representation'. 136. In R. v. Ministry of Agriculture, Fisheries and Food, ex parte Hamble (Off-shore) Fisheries Limited., reported in (1995) 2 All ER 714, Sedley, J. referring to a large number of decisions holding

that the doctrine of legitimate expectation not only extends the procedural fairness but also substantive rights observed:-- 'In my respectful view, principle as well as precedent points to these conclusions. As Laws, J. points out in the passage I have cited, the real question is one of fairness in public administration. It is difficult to see why it is any less unfair to frustrate a legitimate expectation that something will or will not be done by the decision - maker than it is to frustrate a legitimate expectation that the applicant will be listened to before the decision - maker decides whether to take a particular step. Such a doctrine does not risk fettering a public body in the discharge of public duties because no individual can legitimately expect the discharge of public duties to stand still or be distorted because of that individual's peculiar position. As I hope to show in what follows, legitimacy is itself a relative concept, to be gauged proportionately to the legal and policy implications of the expectation. This no doubt, is why it has proved easier to establish a legitimate expectation that an applicant will be listened to than that a particular outcome will be arrived at by the decision - maker. But the same principle of fairness in my judgment governs both situations'.

The learned Judge further observed:

'It is precisely because public authorities have public duties to perform that they can no more be estopped from performing them than they can contract out of them. This is why the decision-maker's knowledge or ignorance of the extent of reliance placed by the applicant upon the factors upon which the expectation is founded has no bearing upon the existence or legitimacy of the expectation. It is upon the practices or promises of the public authority that any such expectation will be built; whether it stands up depends not at all on how much the decision-maker knew of the applicant's reliance on the practice or promise. I do not think that any decision of the Court or justice or any English case which has been put before me suggests otherwise.'

82. In *National Buildings Construction Corporation v. S. Raghunathan*, : AIR 1998 SC2779 , the Apex Court held:

Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* laid down that the doctrine of 'legitimate expectation' can be invoked if the decision

which is challenged in the Court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him private law, or (b) by depriving him for some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reason for contending that it should not be withdrawn.

The Indian scenario in the field of 'legitimate expectation' is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

In *Navjyoti Co-operative Group Housing Society v. Union of India*, : AIR 1993 SC155, the decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* was followed and the decision was summarised in the following words:

It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reason for withdrawal and the opportunity to comment on such reasons. This Court further observed as under: The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reasons of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's legitimate expectation it should afford him an opportunity to make representations in the matter.

83. In *Punjab Communications Limited v. Union of India*, : [1999]2SCR1033, the Apex Court after making a detailed survey of various decisions relating to basic principles of 'legitimate expectation' viz., *Council of Civil Service Union v. Minister*

for the Civil Service, 1985 AC 374 = (1984) 3 All ER 935, Food Corporation of India v. Kamdhenu Cattle Feed Industries, : AIR 1993 SC1601 , Union of India v. Hindustan Development Corporation, : AIR 1994 SC988 , Madras City Wine Merchants Association v. State of T.N., : 1992(60)ELT674(SC) , National Buildings Construction Corporation v. S. Raghunathan (supra) held:

The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision-maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way. The judgment in Raghunatha case : AIR 1998 SC2779 requires that reliance must have been placed on the said representation and the representee must have thereby suffered detriment.

84. The aforesaid decisions of the Apex Court are squarely applicable to the present case. When the notification for EAMCET examination was issued in February, 2001, the students were under a 'legitimate expectation' that the benefit which they were enjoying prior to the issuance of notification by virtue of the statutory rules would be continued till the admissions into the various engineering courses are concluded for the 1st year Under-Graduate course. The impugned executive instructions have belied that legitimate expectation of the petitioners.

85. The executive instructions issued at the last minute cannot have a retrospective effect. There cannot be any doubt whatsoever, having regard to the various decisions of the Apex Court, that rules which would normally be applicable for selecting a candidate would be the one prevailing as on the date of initiation of the selection process which would be the last for filing of the applications. In the instant case, the notification for entrance test was issued in February, 2001 and the last date for submitting the application was 19-3-2001 and the test was held on 27-5-2001. The results were declared on 18-6-2001. Neither at the time when the notification for conduct of entrance test was issued nor at the time when the results were declared, the petitioners were not aware of the change in the procedure of Counselling. Thus, in the instant case, there was infringement of the legitimate expectation of the petitioners. The existing procedure could be altered, if

permissible under law, upon following the due procedure laid down under the statute and not otherwise.

86. In Writ Appeal No. 1809 of 1998 (Mohd. Hussain v. APSRTC) a Division Bench of this Court upon noticing the decisions of the Apex Court in A.A. Calton v. Director of Education, : (1983)ILLJ502SC , and Y.V. Rangaiah v. Srinivasa Rao, : (1983)ILLJ23SC , held that any amendment affecting a right of a party by reason of a subsequent amendment shall have no effect for the purpose of appointment or otherwise if thereby a vested right is affected.

87. In Gurdeep Singh v. State of Jammu and Kashmir, 1995 Suppl (1) SCC 188, which deals with revised reservations for sports and games quota, the Apex Court clearly held that the rules prevailing at the time of issuance of the notification inviting applications for admission to professional courses is relevant and that Government cannot apply revised reservations for sports and games quota retrospectively.

88. The Apex Court in P. Mahendran v. State of Karnataka has followed the decisions in Calton and Rangaiah, : AIR 1990 SC405 .

89. As already noticed hereinbefore, in the instant case, even the statutory rules have not so far been amended. Even if the impugned Government. Order could be termed as an amendment to the statutory rules, such instructions having been issued subsequent to the notification for conduct of the entrance test and declaration of the results of the entrance test, the same cannot be given effect to. The accrued rights of the students to seek admission into various courses as on the date of the entrance test and publication of results as per the statutory rules cannot be taken away by subsequent administrative instructions.

90. Reservation has a definite connotation. In M.R. Balaji v. State of Mysore, (1963) Supp. 1 SCR 439, a Constitution Bench of the Supreme Court held:

If admission to professional and technical colleges is unduly liberalised, the quality of our graduates will suffer. This is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of

the weaker sections of the society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4), like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits.

91. The Constitution Bench further held that if the Constitution Bench held that if under the guise of making special provisions, practically all the seats available were to be reserved by the State, that clearly would be subverting the object of Article 15(4). Speaking generally and in broad way, a special provision should be less than 50%, how much less than 50% would depend upon the relevant prevailing circumstances in each case.

92. In *Dr. Jagdish Saran v. Union of India*, : [1980]2SCR831 , it was held that reservation being an exception and not a rule, few rules of caution as specified therein must be maintained.

93. Recently, in *All India Medical Students Union v. All India Institute of Medical Sciences*, : AIR 2001 SC3262 , the Apex Court held:

When protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. The basic rule is equality of opportunity for every person in the country, which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merits must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped - the reservation geared up to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation.

94. Articles 15(4) and 16(4) are enabling provisions. There cannot be any doubt that special protection can be extended to a category of people specified therein. The same can be either by way of legislation or executive instructions. When the State chooses to extend the policy of reservation through legislation, the executive must take action strictly in furtherance thereof. An affirmative action of the State is permissible in law when such an action is taken for bringing equality and on a principle based on eliminating de facto inequalities. The executive must stop there and cannot by reason of an executive fiat extend the said policy, which is not contemplated by the legislature. Such an attempt on the part of the executive would not only be counterproductive but would also be contrary to rule of law. A reverse discrimination is not contemplated under the constitutional physique nor can be encouraged. It may be permissible to extend the benefit of reservation to a student at more than one stage at different situations during the course of his educational career. But no law far less the Constitution would permit grant of more than one benefit to a student of reserved category at the same time at the cost of the other meritorious candidates.

95. A student belonging to a reserved category of candidates when shows his merits, for all intent and purport, he would be a open category candidate. By reason of implementing the decision of the Apex Court in Ritesh Shah, he cannot be discriminated against vis-a-vis the other reserved category candidates. Insofar as he should be given a preference over other reserved category candidates is concerned, although such candidates are less meritorious, but, by reason of implementation of the reservation policy, they may get a better chance. The decision of the Supreme Court, in my considered opinion, should be implemented only to the aforementioned extent and not any further.

96. Once a reserved category candidate may be considered to be a open category candidate, having regard to the decision of the Apex Court, he would be again to be considered as a reserved category candidate as regards his choice of course, institution, area and nature of seat is concerned. He, for the aforementioned limited purpose, must be considered to be a reserved category candidate and thus any benefit of the Supreme Court judgment can be extended only at the cost of other students belonging to the said category and not at the cost of the open

category students.

97. Ritesh Shah was based upon the principle of equality amongst equals. In other words, equality amongst equals for the purpose of chance of course of study, institution etc. Even a legal fiction, as is well known, has a limited role play and it should not be pushed too far. In *Kuldeep Singh v. Ganpatlal*, : AIR 1996 SC729 , it was held:

It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. (See *Bengal Immunity Company Limited v. State of Bihar*, : [1955]2SCR603 .

98. It is well settled that a judgment cannot be read as a statute. Further more it is well settled principle of law that a decision is an authority for what it decides and not what logically can be deduced therefrom. It is further well settled that even a little violation in fact or additional fact may make lot of difference in arriving at a just conclusion. It is not for the Courts to blindly follow the decision without considering the extent of its applicability. Each case, as is well known, must be applied to the extent the same is applicable.

99. In *A-One Granites v. State of U.P.*, 2001 AIR SCW 848 at 851, 852, it has clearly been held:

The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the rules in relation to the present lease is concluded by the earlier decision of this Court rendered in *Prem Nath Sharma v. State of U.P.* : [1997]3SCR774 . From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.

The question was considered by the Court of Appeal in *Lancaster Motor Co. (London) Limited v. Bremith Limited* (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents *sub silentio* and without arguments are of no moment.

100. Also see *Quinn v. Leatham* (1990-19803) AER (Rep.) 1, *Krishna Kumar v. Union of India* : (1991)ILLJ191SC , *Commissioner of Income Tax v. Sun Engineering Co. Limited* , *Regional Manager v. Pawan Kmar Dubey* : (1976)IILLJ266SC and *Municipal Corporation of Delhi v. Gurnam Kaur* (1988 (1) SCC 101).

101. It is true that in terms of Article 141 of the [Constitution of India](#), a law declared by the Apex Court is binding on all the Courts. It is also true that all authorities having regard to Article 144 of the [Constitution of India](#) must give effect thereto. But the same does not mean that a decision can be applied by the State without keeping in view the mandatory statutory rules and completely ignoring the same. While implementing a decision, the legislative intent must also be borne in mind and an attempt should be made to harmonise the same. Legislative mandate cannot be totally ignored if the same can be read in consonance with a judicial pronouncement.

102. Is it possible to reconcile the judgments of the Apex Court and this Court is the big question, which arises for consideration. Should Ritesh Shah's case be taken to be a declaration of law or merely a mandamus upon the authorities to make a provision for giving effect to the provisions providing for the rule of sliding down? We will have to proceed on the basis that it lays down law, which is enforceable under Article 141 of the [Constitution of India](#). But, can the law in Ritesh Shah's case be applied only in relation to a course of study or can be extended further. The considered opinion of mine is that it has a limited role to play. The principles of sliding down which has a limited role to play cannot be invoked having regard to the multi-area, multi-institutions, multi-courses and above all 'payment seat' and 'free seat' to the disadvantage of more meritorious candidates. Even under the statutory rules, different lists are to be prepared only on the basis of the merit of the students falling in the respective categories. Statutory rules are made to be complied with. The decision of the Apex Court, having regard to the well settled principles of law, should not be read as a statute and must be allowed to have its play only to the extent to which it is possible and permissible. By making an attempt to apply the principles of law in Ritesh Shah's case not only for the purpose of courses of study or institutions, if the same is

extended further, it will be clearly violative of the statutory rules and it may give rise to the constitutionality of the provisions having regard to the doctrine of affirmative action as envisaged in Clauses (1) and (4) of Article 15 of the [Constitution of India](#).

103. Constitution makers thought that the requirement of reservation for the socially and economically Backward Classes including Scheduled Castes and Scheduled Tribes who had been deprived and exploited for a long time, should come to an end within ten years from the date of coming into force of the [Constitution of India](#). It was expected that the standard of all socially and economically Backward Classes including the persons belonging to Scheduled Castes and Scheduled Tribes would be brought to such an extent that within the said period they would be in a position to compete with the open category candidates both in the matter of education and employment. The hopes and aspirations of the founding fathers of the Constitution, however, did not fructify. Even after 51 years of the coming into force of the Constitution, contrary to the hopes and aspirations of the constitutionalists, policy decisions are being taken extending the policy of reservation further and further. An attempt is sought to be made now to grant further privilege apart from reservation. Reasonableness of the policy sought to be introduced by executive instruction, if tested on the aforementioned constitutional touchstone, the same does not fulfil the requirement of either Article 15(1) or 15(4) of the Constitution.

104. Ritesh Shah may have to be read having regard to the hopes and aspirations of the makers of the Constitutions. A judgment, it is trite, must be read in its entirety and reasonably.

105. The function of the judiciary is to administer justice. According to law, it should command legitimacy and legitimacy of law itself would depend with due regard to justice. The interpretation of the Constitution must be made on the touchstone of the expectation and aspirations of the founding fathers of the Constitution. (See *S.R. Chaudhuri v. State of Punjab and Ors.*, : AIR 2001 SC2707

106. If Ritesh Shah's case is applied, beyond the point which was not meant by the Apex Court, the same would clearly come in conflict with the decision of the Apex Court in Rajiv Mittal and Neethi Chandra (supra). In applying Ritesh Shah's, case, as has been done by the respondent-University, the statutory rules as also the representations made to the students would be deviated from is not in dispute.

107. Except in exceptional circumstances, the principles of law are to be made applicable. Frankfurter, J. said that he who takes the procedural sword must perish with it. Statutory rules which have been formulated by the State pursuant whereto the students had made their options cannot be deviated from unless one or the other provisions of the statute are held to be unconstitutional or otherwise invalid in law.

108. Litigation in this field has become annual feature. Every year on one ground or the other the procedure adopted in the matter of admission of qualified candidates in the EAMCET examination was under challenge. It may not be exaggeration to state that there was no year in which the admissions of candidates qualified in EAMCET examination were concluded without any legal battle.

109. Having regard to the provisions of Rule 7, option as regards region wise, institution-wise or course-wise must be exercised simultaneously. So done, it may not give rise to any problem and/or expected to be at its bare minimal. Furthermore, such exercise of option by a reserved candidate as to whether he would opt for a free seat or payment seat should come later on. The provisions of Rule, 7 and 8 must be given its full effect. There is no reason as to why the rules shall be violated by making an attempt to read something in the decision of the Apex Court in Ritesh Shah's case, which is did not decide.

110. In Dadi Jagannadham v. Jammulu Ramulu, 2001 AIR SCW 3051, the Apex Court held:

The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction, which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or

an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not here, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

111. The law must move forward but the creative and dynamic interpretive role of the Court should not be extended to the extent of denying the benefit of the statutory rules to one section of the students at the cost of others. An attempt should always be made to keep balance between the two. Merit of the students must be given due regard. The right to opt for a better course of study, better institution, better place and capacity of the student to opt either for payment seat or free seat must also be borne in mind. A meritorious candidate cannot be denied his just right only because reservation principle does not apply to him. He should be denied the benefit only to the extent permissible and as contemplated under law.

112. It is not in dispute that the demand for a particular branch of Engineering Course varies from the situation obtaining in the job market. It also depends upon the aptitude of the students concerned. Each branch of engineering course requires special knowledge on a particular subject. A student may opt for particular course in engineering because he has a better aptitude in physics, Chemistry or Mathematics or in any other subject, which has a direct nexus with the course of study, which he is opting for.

113. Rankings assigned at the entrance test have statutory reckoning. Rankings assigned to the candidates generate a great deal of hope and aspiration in the candidates.

114. Individual aptitude and attitude has some role to play. Would it be fair and equitable to deny him such opportunity? The Court while interpreting the provisions of a statute vis-a-vis the executive instructions cannot decide the question on hypothesis.

115. The Presidential Order or the EAMCET Rules would not come in the way of the meritorious students exercising the right of option if he is otherwise, entitled to. But, if he cannot do so only because a privilege is being extended by the State in favour of a reserved category candidate, which is not contemplated by law, he is certainly deprived of such right of option. The very fact that counselling is taken recourse to and the students according to their ranking in respective merit lists gets an opportunity to exercise his option itself, in our opinion, confers a right which may not otherwise be taken away save any by reason of clear statutory rules. An appropriate action in favour of a more meritorious reserved category candidate does not contemplate sufferance by similarly placed meritorious candidate belonging to other category only because he does not belong to the reserved category. Option in terms of the rules is to be exercised once and not at different stages. So far as payment seat is concerned, Rule 7(10) has to be applied. In the event, the impugned G.O. is made operative, Rule 7(10) cannot be given effect to.

116. There is another aspect of the matter, which cannot also be lost sight of. It is accepted at the Bar that because of non-filling up of the seats reserved for NRI candidates, many seats meant for NRIs were kept unfilled. In my considered opinion, having regard to the fact that a larger number of candidates await admission in the engineering colleges, the State should make an endeavour to see that in the event the NRI students are not available, the seats should be filled up from amongst the meritorious candidates.

117. The writ petitions are allowed and the impugned order in G.O.Rt No.550, dated 30-7-2001 so far as Clause (ii) of Para 5 of the order is concerned, is set aside. No order as to costs.

V.V.S. Rao, J.

1. I have perused the judgment prepared by my Lord the Hon'ble the Chief Justice. With utmost respect I am not able to bring myself up to accept the view taken by the learned Chief Justice.

The Background Facts: Petitioners' case

2. The petitioners in these two writ petitions appeared for Engineering and Medical Common Entrance Test, 2001. The two petitioners in WP No. 16015 of 2001 obtained ranks of 021550 and 046171 respectively. There are six petitioners in WP No. 16030 of 2001 and they were assigned ranks 002168, 021624, 013715, 001480, 014259 and 013355 respectively.

3. On the eve of counselling for selection and admission to first year engineering courses, the Government of Andhra Pradesh in Higher Education Department issued G.O.Rt No.550 dated 30-7-2001 laying down instructions to be followed in implementation of reservation for SCs/STs/BCs in Engineering and other professional courses. As per these, during the 'counselling process' the seats shall be filled up by open competition irrespective of whether candidates belong to SC/ST/BC in accordance with the instructions issued by the Government in G.O.Ms.No. 996 Employment and Social Welfare dated 11-11-1975. It further says that after filling up the seats by open competition, the counselling for reserved categories like SC/ ST/BC shall be taken up during which a candidate who takes up admission in open competition is entitled to opt for a better branch or better college in which event the resultant vacant seat will be filled up with the candidate from the reserved category in the order of merit. The method of permitting the meritorious reserved candidate to opt for college or seat of his choice described as sliding has been challenged by the petitioners. The gravamen of the contentions in the pleadings (in para 6 in WP No. 16030 of 2001) are as follows :

The seat which has been so vacated by the candidate belonging to reserved community, who secured his admission by virtue of the merit was to be treated as a fall to the quota of reserved communities. This action of the respondents is not proper more so in admissions to the Engineering Colleges because in engineering course there are many branches and if sliding is permitted it will topsy turvy the entire process of admissions. I further submit that if a reserved candidate secures admission by virtue of his merit he is entitled to get admitted under open competition. But if he intends to slide to better college or branch, then the resultant vacancy should be filled up by the next meritorious candidate but not with that particular reserved category candidates who have vacated the seat and opted for better college or branch in engineering. I respectfully submit that a candidate who

competes for an engineering seat would have various options for example, he can choose the best of the colleges without any reservations as to the group or course of study; he can choose a subject of his choice without any reservations as to the college in which the said course is offered etc., further the reservations are taken into account based not on the individual course of study, but the entire engineering segment as a whole. This would also one of the reasons for the non-applicability of the principle of sliding, If such principles are applied to admissions into Engineering Colleges, it would lead to preposterous consequences.

4. In effect, the petitioners contend that the application of sliding rule in engineering stream would not be in the interest of student community in general and at any rate it would lead to a situation where rule of merit is totally ignored. The petitioners, however, have no objection if the candidates belonging to reserved categories SC/ST/BC who come up in the merit are considered in the open competition and treated as merit candidates.

5. When the matters were initially listed before one of us, (Sudershan Reddy, J) it was directed to be placed before the Hon'ble the Chief Justice on administrative side for appropriate directions as to placing the matter before Division Bench. The matter is referred to Full Bench having regard to the importance of the matter in interpretation of the law and impugned instructions.

Case of the State of A.P.

6. The Secretary to Government, Higher Education, has filed a counter-affidavit to the following effect. The writ petition is premature as the petitioners have not suffered any prejudice and the write petition is filled on mere apprehension. Having regard to the nature of the selection and the different stages of reservation, it is not possible to predicate the impact of the impugned order till the process is completed. This year more than 37,000 (thirty seven thousand) seats are offered to be filled in counselling in 164 Engineering Colleges all over the State. The counselling started on 30-7-2001 with admissions to physically handicapped persons and children of armed personnel. The counselling for open category commenced from 5-8-2001. The instructions vide the impugned G.O. were issued in relation to implementation of reservation for SC/ST/BC keeping in view the

previous practice, practical experience and the judgment of the Supreme Court and the High Court of Andhra Pradesh. The impugned instructions are not contrary to the statutory rules issued in G.O. Ms. No. 184 Education (EC-2) Department, dated 20-8-1993 known as Andhra Pradesh Professional Educational Institutions(Regulation of Admission into Undergraduate Professional Courses Through Common Entrance Test Rules, 1993 (hereinafter called 'EAMCET Rules') framed in exercise of powers under Section 3 read with Section 15 of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (hereinafter called 'the Act'). The impugned G.O. is only by way of clarification for effective implementation of the Rules of reservation as per Rules 7 and 8 of the Rules. The decision to give statutory status does not mean that the instructions issued in the impugned G.O. cannot be followed.

7. The Supreme Court has laid down that the Rule of Reservation should not work for the disadvantage of meritorious reserved candidate and therefore directed to follow the rule of sliding. The committee for admissions passed resolution on 21-7-2001 that the modified procedure to fill up OC/BC/SC/ST seats as per Supreme Court decision in Ritesh Shah v. Y.L. Yamul, : [1996]2SCR695 , case will be followed and the Government issued instructions accordingly for effective implementation at of the law laid down by the Supreme Court in Ritesh Sah case.

8. The counter-affidavit further states that whether a candidate belongs to open category of reserved category his choice of seat on the merit cannot be denied in accordance with the scheme of selection. Where reserved category candidate secured a seat on the basis of merit, his choice of college and course of study cannot be denied. The seat allotted to such meritorious reserved candidate cannot be counted against quota reserved for category to which he belongs. Therefore, by the impugned instructions it was stipulated that the seat vacated by such meritorious reserved candidate shall be filled up with a candidate of the same reserved category, If the resultant vacancy is filled up bymerit (OC) candidate without any reference to the category of reserved candidate it would be in violation of principles laid down in Ritesh Shah case. Unless the petitioners show that in any given case a particular student belonging to open category or reserved category is provided or denied seat, the writ petition cannot be maintained. The

impugned instructions are not new and the practice now adopted has been in vogue for admission to medical course also. The allegation that sliding rule for engineering course is for the first time prescribed is denied. The impugned instructions do not supersede or supplant any statutory rules.

Rival Contentions:

9. The learned Counsel for the petitioners in WP No. 16030 of 2001 Sri Nooty Rama Mohana Rao submits that when the entire process of admissions is regulated by the statutory rules issued under the Act, without amending the rules, the State Government has no power to regulate the admissions in general and the method and manner of sliding in particular. He further submits that each engineering branch in the college is to be treated as separate course by itself and the admissions have to be regulated by course-wise and branch-wise. In the said premise, the resultant vacancy due to sliding require to be filled up by next meritorious candidate and not by candidate from the same reservation category. The principle of sliding is not applicable to engineering course as the same would vitiate rule of merit in professional courses. He also pointed out that the principle laid down in Ritesh Shah case is not applicable to engineering course. He also submits that a vacancy arising due to sliding of meritorious SC/ST/BC candidate should be treated as 'casual vacancy' for the purpose of Rule 7(13). Besides Ritesh Shah case he also referred to the judgments in Ashwin Prafulla Pimpalwar v. State of Maharashtra, 0043/1992 : AIR1992 Bom233 , Y. Raghavendra v. NTR University of Health Sciences, : 1999(3)ALD264 , (Raghavendra-I), N.T.R University of Health Sciences v. Y. Raghavendra, (DB), (Raghavendra-II) and P. Chinnayya v. Nitesh Narayana, : 1998(4)ALD584 .

10. Sri S. Sriram, learned Counsel for the petitiosers in WP No. 16015 of 2001 submits that the impugned G.O. is contrary to Rule 7(6) of the Rules and therefore the same is unenforceable. He also submits that para 5 (ii) of the impugned order has the effect of introducing 'placement by substitution' in State-wide common merit list and such substitution by a student belonging to the reserved community in effect renders the State-wide-cum-community merit list. When a meritorious reserved candidate who is admitted as merit candidate vacates the seat to join

better course/branch or better college, the seat is a merit seat and the same cannot be converted into a reserved seat by enabling only reserved candidate to get admission. The learned Counsel also submits that the Government issued the impugned G.O. incorporating Clause 5(ii) purportedly in view of the observations made by the Division Bench in Raghavendra-II which was rendered sub-silently without any pleadings and arguments and therefore the impugned order is unsustainable. He would further submit that if the petitioners are denied the remedy on the ground that the writ petition is premature third party interests would step giving rise to equitable considerations rendering petitioner's remedy ineffective. Furthermore, he submits there is no provision enabling a candidate to exercise option and therefore the administrative supplementation in the enforcement of the rules is uncalled for. Besides referring to the judgments supra the learned Counsel also placed reliance on the judgments of the Supreme Court in *Indra Sawhney v. Union of India*, : AIR 1993 SC477 , *State of Bihar v. M. Neethi Chandra*, : (1996)6SCC36 , and *Rajiv Mittal v. Maharshi Dayanand University*, : AIR 1998 SC680 .

11. The learned Advocate-General Sri T. Ananta Babu, appearing for the State made elaborate submission to the following effect. The impugned Government Order is issued following the decision of the Supreme Court in *Ritesh Shah* which mandate that meritorious reserved candidate has to be admitted to open competition seat. Therefore, the State action in giving option to the meritorious reserved student is an additional benefit by reason of the policy of the Government to confer a privilege on the candidates belonging to reserved categories. Such policy formulation being in the field of expertise is not justiciable. Section 3 of the Act 5 of 1983 enables the Government to lay down such policy and therefore the same cannot be held to be contrary to the statutory rules and in effect the impugned order contains the policy in relation to Section 3 of the Act. By way of abundant caution the Government also thought it necessary to make amendments to the statutory rules. If a seat vacated by a meritorious SC/ST/BC candidate is not filled up with a candidate from the same category, the same would result in a situation where the policy of reservation cannot be given effect fully effect to. When the rules themselves provide for reservation, if the seat vacated by meritorious candidate, who opts for a better branch or college is filled up by

another candidate from general category, a reserved candidate who is replaced by meritorious candidate from other college or branch would be left without any seat and the same would violate the reservation rules as well as Articles 14 and 15 of the [Constitution of India](#). The option for college or course exercised by the reserved candidate at the stage of selection is provisional and not final and therefore at the stage of admission he can always choose/opt college/branch of his choice. He would also submit that the writ petition is premature and the petitioners cannot be said to have any grievance. The learned Advocate-General has placed reliance on various judgments of the Supreme Court in Maharashtra S.B.O.S & H.S. Education v. Paritosh, : [1985]1SCR29 State of Maharashtra v. Minoo Noazer Kavarana, : [1989]2SCR710 , Preeti Mittal v. Gaganjot Kaur Saira, : [1999]2SCR420 , Pennar Delta Ayacutdars' Assn. v. State of A.P., : 2000(3)ALD715 (DB), Tata Iron and Steel Company Limited v. Union of India, : AIR 1996 SC2462 , Delhi Science Forum v. Union of India, : [1996]2SCR767 .

Points for Consideration :

12. In the background of the provisions of the Act, the rules and various judgments touching upon the subject as well as the rival contentions made before us, we formulate the following points for consideration.

1. Whether paragraph 5(ii) of the impugned Government Order being G.O.Rt. No.550 dated 30-7-2001 is not in the realm of the policy and what is the scope of judicial review when a policy decision is challenged before the High Court?
2. Whether paragraph 5(ii) of the impugned G.O is contrary to A.P. Educational Institutions (Prohibition of Capitation Fee), Act, 1983, A.P. Professional Educational Institutions (Regulation of Admissions into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 issued in G.O. Ms. No.184 dated 20-8-1993 ?
3. Whether the State Government is justified in contending that the impugned Government Order is issued to give effect to the judgment of the Supreme Court in Ritesh Shah and the judgment of this Court in NTR University of Health Sciences v. Raghavendra-II ?

4. Whether the principle laid down in Ritesh Shah case is not applicable to engineering admissions and if it is applicable whether the application of sliding rule entails meritorious candidate (OC) to claim the seat which is vacated by a meritorious SC/ST/BC candidate who was initially selected as OC candidate, and whether petitioners right if any under Articles 14 and 15 of the [Constitution of India](#) is violated?

The impugned Government Order:

13. We feel it necessary to notice the policy unveiled in impugned order being G.O. Rt. No.550 dated 30-7-2001 as well as circumstances leading to such policy option. It appears that Backward Class Welfare Association made a representation to the State Government to follow the judgment of the Hon'ble Supreme Court in Ritesh Shah in engineering admissions as well in implementing the rule of reservation for SC/ST/BC. The Legislature Committee on Welfare of Backward Classes in its meeting held on 24-1-2001 also discussed about the procedure adopted for implementation of BC reservations in engineering and other professional courses. The said committee opined that the same procedure as is being followed in MBBS admissions must be followed in engineering admissions also. By letter dated 6-6-2001 the Commissioner of Technical Education, Government of Andhra Pradesh (who is also Convenor of the Committee for Admissions) informed the Government that the issue of implementing reservation to SC/ST/BC to engineering admissions has been examined in detail in the light of the judgment of the Supreme Court in Ritesh Shah case in consultation with BC. Welfare Department and that the same be followed in engineering admissions in the light of the judgment of the Division Bench of the High Court in Raghavendra-II case. Therefore, after consideration and due examination of the issue relating to implementation of reservation for SC/ST/BC in engineering and other professional courses, while also ordering to issue necessary amendments to the rules separately, the Government in para 5 of the order issued the following instructions.

(i) In the counselling process, the seats to be filled by the open competition should be filled up first, wherein the candidates should be called for counselling based on merit alone irrespective of whether they belong to SC, ST, BC, in accordance with

the instructions issued by the Government in G.O.Ms.No.996, Employment and Social Welfare dated 11th November, 1975.

(ii) Next, reservation categories like SC/ST/ BC candidates will be counselled to fill up the seats earmarked for them in their respective categories. During this process, if a candidate belonging to Scheduled Caste/Scheduled Tribe/Backward Classes who had taken admission under open competition, opts for a better branch or better college of his choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open competition shall be filled with a candidate from the same reservation category only, in order of merit.

14. The Government also directed the Commissioner of Technical Education and Chairman of the State Council for Higher Education to take further action to follow the above instructions in implementing the rule of reservation in engineering, B. Arch, B. Pharmacy and other professional courses through Common Entrance Test.

15. Paragraph 5(i) lays down that candidates should be called for counselling based on merit alone irrespective of whether they belong to SC/ST/BC while conducting counselling and all the open competition seats should be filled up first. As we presently elucidate such procedure would enable the meritorious SC/ST/BC candidates to compete with.

16. Paragraph 5(i) lays down that candidates should be called for counselling based on merit alone irrespective of whether they belong to SC/ST/BC while conducting counselling and all the open competition seats should be filled up first. As we presently elucidate such procedure would enable the meritorious SC/ST/BC candidates to compete with open merit candidate so that the statutory minimum reservations would be fully implemented. At the outset, we must record that the petitioners have no objection for such method of treating meritorious SC/ST/BC candidates also while filling up seats by open competition.

17. Even paragraph 5(ii) is not impeached nor objected to in toto. This instruction is in three parts. As per first part after filling up seats by open competition

reservation categories like SC/ST/BC candidates will be counselled to fill up seats earmarked for them in their respective categories. The second part says that during the process of counselling for reservation categories a candidate belonging to SC/ST/ BC who had taken admission under 'open competition' under (paragraph 5 (i)) has option to choose a better branch or better college of his choice. This is, however, subject to the conditions that he/she belong to SC/ST/BC would be eligible as per the rule of reservation for a branch or for better college for which he/she opts. The third part of paragraph 5 (ii) is to the effect that the seat vacated by SC/ST/BC candidate as visualised by second part of paragraph 5(ii), shall be filled up only by a candidate from same reservation category in order of merit. The reason is simple. If a meritorious SC/ ST/BC candidate opts for a college/branch of his choice, he would naturally be replacing a candidate of reserved category in the college for which he opts. Such replaced candidates must belong to the category to which meritorious reserved candidate belongs and in such an event the instruction postulates that the replaced SC/ST/BC candidate should be admitted in the seat vacated by meritorious reserved candidate. For instance, if candidate 'A' wants to go to a better branch or better college and as per rules of reservation there is no seat available for candidate 'A' either in the better branch or better college, the question of giving option does not arise. To our mind that is the correct reading of instruction in para 5(ii) of the impugned Government Order.

18. We may also notice that paragraph 5 adumbrates a policy of the Government flowing from the deliberations of the Legislature Committee on Welfare of Backward Classes which considered the law laid down by the Supreme Court in Ritesh Shah. The instructions in paragraph 5(ii) are independent of the statutory rules in G.O. Ms. No.184 dated 20-8-1993. We will advert to this in detail when we consider the relevant issue.

The Provisions of the Act 5 of 1983 And, EAMCET Rules:

19. The admission of students to various educational institutions into various educational courses is governed by an enactment of A.P. State Legislature and catena of rules made thereunder. So as to regulate admission into educational

institutions and to prohibit the collection of capitation fee the State of Andhra Pradesh enacted the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation fee) Act, 1983 (Act 5 of 1983, hereafter called the State Act). Section 3 of the Act reads as follows:

3. Regulation of admission into educational institutions :--(1) Subject to such rules as may be made in this behalf, admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed:

Provided that admission into Medical and Engineering Colleges shall be made only on the basis of the ranking 'assigned in the Common Entrance Test conducted aforesaid. (2) The admission into educational institutions under sub-section (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes (and other categories of students as may be notified by the Government in this behalf) and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

(3) xxxx xx

20. Section 3 of the said Act provides that subject to rules made under the Act, admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on' the basis of ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed. The proviso to Sub-section (1) of Section 3 however mandates that admission into medical and engineering colleges shall be made only on the basis of ranking assigned in the Common Entrance Test conducted as per rules. Sub-section (2) of Section 3 lays down that admission into educational institutions under Sub-section (1) may be subject to rules made by the Government in regard to reservation of seats to the members belonging to SC, ST and BC, and other categories of students as notified by the Government in this behalf. The said sub-section also lays down that the reservations provided under the A.P. Educational Institutions (Regulation of Admissions) Order, 1974 (hereinafter called 'the

Presidential Order') shall also be followed in the matter of admissions.

21. In exercise of the powers under Sections 3 and 15 of the said Act, the Governor of Andhra Pradesh has promulgated the EAMCET Rules. These rules provide for constitution of various authorities to deal with various stages of medical, and, engineering and other professional admissions. These stages include (i) calling for applications and conducting EAMCET; (ii) calling for applications by the admission committee (where required) for the purpose of allotting students (selection) to various colleges keeping in mind the institutional as well as subject (branch) choice of the rank holder; and (iii) after selection and allotment, the concerned Government/private college admitting students allotted by the Convenor of Admission Committee.

22. Rule 4 of the Rules provides for eligibility criteria for admission. Rules 5 and 6 deal with conducting Common Entrance Test by the Convenor of EAMCET Committee appointed by the State Council and preparation of Statewide merit list, region-wide merit list etc., by the Common Entrance Test Committee. Rule 7 is relevant for the purpose of this case. It deals with procedure for admission into Government/ University professional Colleges/Regional Engineering Colleges and private Professional colleges.

23. For engineering course the competent authority will issue an advertisement inviting common application for MBBS Course Admission Committee invites separate applications for admission after publication of results of EAMCET, for EAMCET as well admission from qualified candidates who are desirous of seeking admission into various engineering colleges. All the applications made by the candidates who are qualified to seek admission as a consequence of obtaining rank in the EAMCET shall be scrutinised by the competent authority. After scrutinising, two categories of merit lists are to be prepared, the common merit list and category-wise merit list. The seats in all private professional institutions shall be pooled up course-wise and distributed among the three local areas of the State - Osmania University (OU) area, Andhra University (AU) Area and Sri Venkateswara University (SVU) areas as per the Presidential Order. At this stage we may extract Sub-rules (6) and (7) of Rule 7 which are important.

7(6). Candidates who have secured higher ranks at the Entrance Test will be called for an interview in the order of merit for selection and allotment of course/branches/ institutions. For the convenience of the candidates, representatives of all University Professional Colleges, Regional Engineering College, Warangal and Private Professional Colleges in the State shall sit at a common table. As and when each candidate gets his turn for interview in the order of merit, choice of Institutions and Branch (course of study) will be given to him, depending upon availability at the point of time with due regard to the eligibility of the candidate for a seat in a particular local area for a particular reserved category.

7(7) The selection of candidates and allotment of courses/institutions in respect of University Professional Colleges, Regional Engineering Colleges and Private Professional Colleges shall also be solely on the basis of merit as adjudged by the rank obtained in the Entrance Test subject to the condition that the candidate should have passed the qualifying examination with the minimum marks prescribed for the Entrance Test. However, mere appearance at the Entrance Test and obtaining high rank in the merit list does not entitle a candidate to be considered for admission automatically into any course/branch/ institution unless he also satisfies the rules and regulations of admission prescribed by the concerned University/Government including marks to be obtained in the qualifying examination,

24. Sub-rules (8) and (9) of Rule 7 deal with selection and allotment of candidates for the free seats and payment seats in private professional colleges. As per Sub-rule (10) of Rule 7, the competent authority shall have to give 10 days time to students admitted against payment seats after filling up free seats and as per Sub-rule (11) candidates are selected and allotted for payment seats in private colleges as per the merit among the applicants opted for payment seats. Sub-rule (13) lays down that after completion of (he admission for free seats as well as payment seats, the competent authority shall prepare a wait list of the candidates based on ranking and publish the same along with the marks obtained by them in the EAMCET. The said list shall be adopted by the competent authority for filling up of casual vacancies or drop out vacancies arising after the stage of selection for payment seats.

25. A reading of Rule 7, especially Sub-rules (6), (7) and (13) shows that a student who obtained a rank in the merit list does not automatically get a right for admission. The selection, allotment and admission is subject to availability of seat and further subject to the rules, regulations and norms prescribed by the concerned University and the Government. Further, till last date for admissions at various stages the competent authority has to make selections and allot candidates for admission following the principle of merit and rule of reservation. After such selections and allotment for free seats as well as payment seats, a wait list shall have to be prepared to enable the private Managements to admit students for the casual vacancies and residue vacancies. Therefore, the 'connotation of merit ranking' in EAMCET at the stage of selections and allotment by the admission committee during the counselling is not the same. This is especially so in multi-discipline education course like BE/B. Tech.

Article 371-D and Presidential Order:

26. As seen above, Sub-section (2) of Section 3 of the Act lays down that reservation provided under A.P. Educational Institutions (Regulation of Admissions) Order, 1974 ('the Presidential Order' for brevity) shall also be followed in the matter of admissions. We may passingly mention that having regard to historical reasons, the Parliament has introduced Article 371-D by way of Constitution (Thirty-second Amendment) Act, 1973. Under clause (1) of Article 371-D the President is vested with the power to make orders for providing equitable opportunities and facilities for people belonging to different parts of the State in the matter of public employment and in the matter of education. In exercise of such power, the President of India has made the Presidential Order which contains ten paragraphs or clauses.

27. Paragraph 5 provides that admission to 85% of available seats in every course of study provided by various Universities shall be reserved in favour of the local candidates in relation to the local area or other educational institutions. Paragraph 6 provides for reservation of seats in Statewide Universities and Statewide educational institutions. Paragraph 10 postulates that nothing in the Presidential Order shall effect the operation of any provisions made by the State in respect of

reservations in the matter of admission to any educational institution in favour of women, socially and educationally backward class citizens. Paragraph 9 gives overriding effect to the Presidential Order over all statutes, ordinances, rules, regulations and any other order made by the State Government. Under paragraph 8 of the Presidential Order the President may require the State Government to issue such directions as may be necessary for the purpose of giving effect to the Presidential Order. Accordingly, in G.S.R. 317 (E) the President has authorized the Government of Andhra Pradesh to issue directions. In furtherance thereof the Government of A.P. with the consent of the President of India has issued orders in G.O.Ms.No.749 dated 2-8-1974 laying down various guidelines and instructions to fill up the seats in accordance with the Presidential Order. The same was replaced by another order in G.O. P No.646 dated 10-7-1979.

28. It is necessary to notice admission procedure as laid down in Government Order being G.O,P.No.646. In the said G.O. (para 10) the Government directed to follow the procedure set out in Annexures I, II and III thereto. These annexures govern the implementation of reservation (in educational institutions) for local candidates, including reservation for SC/ST/BC candidates. It is apposite to advert in some detail to Annexure III to G.O.P No.646 which contains guidelines for admission to non-Statewide educational institutions.

29. There are five paragraphs and four illustrations, A, B, C,D in Annexure III. As per paragraph (1) of Annexure III available seats in the course of study are computed by deducting from the total number of seats reserved for candidates from outside the State. As already observed, paragraph 5 of the Presidential Order lays down that 85% of available seats are to be reserved for local candidates. As per paragraph 2 of Annexure III, in determining 85% seats any fraction of a seat is treated as one. It is important to notice that 'available seats' in paragraph 5 relates to all the seats in the course of study and it is irrelevant whether course of study contains more than one branch. For example, B.E. is one of course of study and each branch of B.E. cannot be considered as a course of study. A reference to paragraph 2 (a) (available seats), paragraph 2 (e) (Statewide educational institutions), paragraph 4 (definition of local candidates) and paragraphs 5 and 6 of the Presidential Order makes the same very clear.

30. As per paragraphs 3, 4 and 5 of Annexure III, the procedure for preparation of a provisional admission list and final admission consists of three stages. In the first stage, a provisional list of admission to fill up all the available seats is drawn up from among all eligible applicants on the basis of relevant merit, duly following reservation in favour of SC/ST/BC/Women as provided under admission rules (say EAMCET Rules). In the second stage, the provisional admission list is scrutinized to ascertain the number of local candidates finding place in the list and if the number of local candidates in the provisional list is equal to the number of seats reserved in their favour, the same shall be deemed to be the final admission list. In case it is found that in the provisional admission list local candidates fall short of number of seats reserved in their favour a peculiar procedure adopted in the next stage. In the third stage the local candidates who are not included in the provisional admission list at the first stage shall be placed in a remainder list in order of merit. From the provisional list the non-local candidates in the reverse order from the bottom shall be eliminated and replaced by the local candidates selected from the 'remainder list' duly following the rule of reservation for SC/ST/BC/Women etc. The process of elimination of non-local candidates is continued till it is found that the number of local candidates in the provisional admission list is equal to 85% of seats reserved for them. However, in third stage if a non-local candidate to be replaced is a reserved candidate belonging to SC/ST/BC, he/she shall be replaced only by a local candidate belonging to SC/ST/BC and none else. Even in this process, if a local SC candidate is not available to replace a nonlocal SC candidate, such candidate in the provisional admission list shall be allowed to remain in the list and non-local non-SC candidate immediately above him in the provisional list shall be replaced by the local candidate from the remainder list. These principles can be better appreciated by reference to four illustrations given in Annexure III to G.O.P.No.646, which read as under.

Illustration !A':-

The number of available seats in a course of study is 101, then the number of seats reserved in favour of local candidates will be 85% of 101 with the fraction being counted as one. Thus, the number of seats reserved in favour of local candidates will be 86. If in the provisional admission list the number of local

candidates equals or exceeds 86 such provisional admission list shall be deemed to be the final admission list. Illustration - 'B':-

If, in the case referred to under Illustration 'A' the number of local candidates in the provisional admission list is 84, the 2 nonlocal candidates at the bottom of the provisional admission list shall be eliminated and replaced by 2 local candidates from the remainder list. The provisional list so modified shall be deemed to be the final admission list. Illustration 'C':-

If in the case referred to under Illustration 'B' above one of the non-local candidates at the bottom of the provisional admission list who is proposed to be eliminated is a Scheduled Caste candidate whose replacement by Non-Scheduled Caste candidate will violate the rule of reservation in favour of Scheduled Castes, such nonlocal Scheduled Caste candidates shall be replaced by the first available local Scheduled Caste candidates in the remainder list. Illustration 'D':- If in the case referred to under Illustration 'C' above, it is found that there is no local Scheduled Caste candidate available in the remainder list to replace the non-local Scheduled Caste candidate, then the nonlocal Scheduled Caste candidate in the provisional admission list shall be allowed to remain in such list and the non-local non-Scheduled Caste candidate immediately above him in such list shall be eliminated and replaced by a local candidate from the remainder list.

31. We have referred to the Presidential Order and G.O.P No. 646 dated 10-7-1979 to show that even for implementing the Presidential Order which has overriding effect, the State has taken abundant care to see that rule of reservation is strictly adhered to and even permitted to fill up a reserved seat in a local area with a non-local candidate by eliminating a non-local non-SC candidate. This will have relevance when we actually consider the legality of para 5(ii) of impugned order.

In Re Points 1 and 2:

32. The learned Advocate-General has submitted that having regard to the various provisions of the Act, rules and judgments of the-Supreme Court as well as this Court, the Government has taken a policy decision to give extra benefit for

reserved candidates in open list by reason of which option is available to a meritorious reserved candidate to choose a branch of his choice or a college of his choice. He submits that such a policy decision is not justiciable area of judicial review. By reason of the policy, if the petitioners suffer any deprivation of choice/option in respect of the seat vacated by a reserved meritorious candidate, the same is permissible under the policy which has constitutional sanction as well as the judicial approval by the Apex Court. Therefore, we need to address the question whether the relevant provisions in the Act permit the State to lay down policy and whether it is permissible to do so having regard to the axiomatic principle of law that the executive instructions cannot override the statutory rules. We may again notice Sub-section (2) of Section 3 of Act 5 of 1983 which reads as under:

(2) The admission into educational institutions under Sub-section (1) shall be subject to such rules as may be made by the Government in this regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

33. Sub-section (1) of Section 3 read with the proviso thereunder lays down that admission into Medical and Engineering Colleges shall be made only on the basis of ranking assigned in the Common Entrance Test. Under Sub-section (2) the Government is empowered to make reservation rules. The words used in Sub-section (2) are 'as may be'. Further, the provisions of the Presidential Order by reference have been incorporated in Sub-section (2) of Section 3. We have already seen that the President of India has delegated power by reason of paragraph 8 of the Presidential Order to the Government of Andhra Pradesh to issue such directions as are necessary for the purpose of giving effect to the Presidential Order. This only means that the Government may make rules in regard to reservation of seats to the members belonging to SC/ST/ BC and also has power to issue such directions as may be necessary for the purpose of paragraph 10 of the Presidential Order which speaks of reservation for SC/ ST/BC. The power to lay down policy for implementing the Presidential Order including

reservation for SC/ST/BC by way of a policy lies with the Government of Andhra Pradesh. It is also to be noted that Rule 8 of the EAMCET Rules provides for reservation for admission both for 'free seats' and 'payment seats.' Rule 8(1) provides for region-wise reservation of seats(for local candidates). It states that 85% of the seats in each course shall be reserved for local candidates as specified in the Presidential Order and G.O.P No.646 dated 10-7-1979. It also provides that in respect of State-wide institutions 85% of the seats shall be reserved to local candidates belonging to AU local area, OU local area and SVU local area in the ratio of 42:36:22. Rule 8(2) provides that seats for SC/ST/ BC candidates shall be reserved in each institution in the ratio 15%, 6% and 25% respectively. Sub-rule (3) of Rule 8 provides for reservation for women in each course in each institution at 33 1/3rd % from each category of OC, SC, ST, BC etc.

34. Either Section 3 of the Act or EAMCET rules do not touch upon the area in respect of which the impugned G.O. came to be issued as a matter of policy. In our considered opinion, having regard to the language of Sub-section (2) of Section 3 as well as paragraph 10 of the Presidential Order, it is permissible for the State to issue such a Government Order. It is well-settled law of the land that while making reservation either under Article 15(4) or under Article 16(4) the State need not make any legislation or promulgate subordinate legislation, and reservations can be provided by executive order. If any authority is required we only need to refer to a Nine-Judge Bench decision of the Apex Court in *Indra Sawhney*, wherein it was laid down:

The words 'order', 'bye-law', 'rule' and 'regulation' in this definition are significant. Reading the definition of 'State' in Article 12 and of 'Law' in Article 13(3)(a), it becomes clear that a measure of the nature contemplated by Article 16(4) can be provided not only by the Parliament/ Legislature but also by the executive in respect of Central/State services and by the local bodies and 'other authorities' contemplated by Article 12, in respect of their respective services. Some of the local bodies and some of the statutory corporations like Universities may have their own legislative wings. In such a situation, it would be unreasonable and inappropriate to insist that reservation in all these services should be provided by Parliament/ Legislature.

35. The majority in Indra Sawhney also observed that the moment reservation is provided by executive order, the same becomes effective the moment it is made, even where there are statutory rules in existence dealing with other aspect. The following statement of law is apposite:

It is well settled by the decisions of this Court that the appropriate Government is empowered to prescribe the conditions of service of its employees by an executive order in the absence of the rules made under the proviso to Article 309. It is further held by this Court that even where Rules under the proviso to Article 309 are made, the Government can issue orders/instructions with respect to matters upon which the Rules are silent, (see Sant Ram Sharma v. State of Rajasthan, : (1968) IILLJ830SC . This view has been reiterated in a recent decision of this Court in Comptroller and Auditor General v. Mohanlal Mehrotra, : 1990(47)ELT188(SC) .

36. We may notice that Articles 15(4) and 16(4) refer to make 'special provision for the purpose of reservation' and it does not speak of special law or special rules in the sense they are understood. In such an event, we fail to understand as to how the State is denuded of the power of issuing policy guidelines as is done in his case when they could do so even without provision like Section 3 of the Act and/or Rule 8 of the EAMCET Rules.

37. 'Public Policy' is a variable thing. It must fluctuate with the circumstances of the time (See, Benzmon and Company v. Krain Industries, (1918) I KB 331. Public policy is the principle of law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against public good, which may be termed, as it sometimes have been, the policy of the law or public policy in relation to the administration of the law (Egertron v. Sronblow, (1853) HL Cases 1. According to Black's dictionary, (fourth edition), policy means 'the general principles by which a Government is guided in its management of public affairs, or the legislature in its measures'. This term, as applied to a law, ordinance, or rule of law, denoted its general purpose or tendency considered as directed to the welfare or prosperity of the State or community.' 'Therefore, we must hold that it is a policy decision of the State to give an extra privilege or concession to a meritorious reserved candidate to opt for a better branch or better college of his choice.

38, We may also refer to the following observations of the Supreme Court in *Indra Sawhney* wherein it was laid down that the provisions of Articles 14, 15(1), 15(4), 16(1) and 16(4) of the [Constitution of India](#) also permit conferring concessions, privileges, facilities etc. besides reservation which is highest form of affirmative action. The observations in paragraphs 58 and 59 (of AIR) are apt:.....In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The Constitutional scheme and context of Article 16(4) induces us to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration..... Merely because, one form of classification is stated as a specific clause, it does not follow that the very concept and power of classification implicit in Clause (i) is exhausted thereby. To say so would not be correct in principle. But, at the same time, one thing is clear. It is in very exceptional situations, -- and not for all and sundry reasons-- that any further reservations, of whatever kind, should be provided under clause (i). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress a specific situation.

39. We may now consider the submission of the learned Advocate-General that being in the realm of expertise the issue is not justiciable. There cannot be any doubt that the method and manner of providing reservations is no less complex, especially in Andhra Pradesh where Article 371-D, plus the Presidential Order issued under the said Article, plus various Government Orders issued by the State Government in accordance with paragraph 8 of the Presidential Order plus Act 5 of 1983 and the Rules made thereunder operate and govern the field of admissions to professional colleges. In such complex area to make 'special provision' for SC/ST/BC candidates is certainly a matter of expertise. The Supreme Court dealing with this aspect in *Indra Sawhney* held:

The executive is supposed to know the existing conditions in the society, drawn as it is from among the representatives of the people in Parliament/Legislature. It does not, however, mean that the opinion formed is beyond judicial scrutiny

altogether. The scope and reach of judicial scrutiny in matters within subjective satisfaction of the executive are well and extensively stated in *Barium Chemicals v. Company Law Board* : [1967]1SCR898 which need not be repeated here. Suffice it to mention that the said principles apply equally in the case of a constitutional provision like Article 16(4) which expressly places the particular fact (inadequate representation) within the subjective judgment of the State/executive.

40. Even where a decision requires an expert handling can it be said that the judicial review is impermissible? The question is no more *res Integra*. Ordinarily speaking a policy decision simpliciter is beyond the scope of judicial review. Policy decisions, which require delicate balancing and consideration of complex socio-politico-economic inputs cannot be brought under judicial scrutiny. Judiciary would not ordinarily encroach upon the areas exclusively left by the Constitution to the legislative wisdom and executive expediency. The Court is not equipped with expertise and the Court has no machinery to verify the facts presented to the Courts. Even in public law, the rival contestants seldom agree to the jurisdictional facts. In such circumstances, what is the scope of judicial review in such cases?

41. It is settled that generally the Court does not lightly interfere with the policy decision taken by the State in discharge of their 'executive function'. 'The wisdom of the legislative policy' may not be open to judicial review, but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights. If it trenches upon any of the fundamental rights, it is void as cursed by Article 13 of the Constitution (See *A.L. Kalra v. The Project & Equipment Corporation of India Limited*, : (1984)1ILLJ186SC . In *Srilekha Vidyarthi v. State of U.P.*, : AIR 1991 SC537 , dealing with the challenge to the policy decision taken by the Government, the Supreme Court ruled.

It can no longer be doubted at this point of time that Article 14 of the [Constitution of India](#) applies also to matters of Governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional, (see *Ramana Dayaram Shetty v. The International Airport Authority of India* : (1979)1ILLJ217SC and *Kasturi Lal Lakshmi Reddy v. State of J and K* : [1980]3SCR1338 . In *Col. A.S. Sangwan v. Union of*

India : AIR 1981 SC1545 , while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria.

42. In *State of Punjab v. Ram Lubhya Baggal*, : [1998]1SCR1120 , dealing with scope of review of Government policy, the Supreme Court held:

So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinise it and test the degree of the beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional statutory or any other provisions of law. When Government forms its policy, it is based on number of circumstances on facts, law, including constraints based on its resources. It is dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints,

To the same effect is the decision of the Supreme Court in *M.P. Oil v. State of MP.*, : (1997)7SCC592 .

43. We may also mention the decisions in *University of Mysore v. Govinda Rao*, : [1964]4SCR575 , *Maharashtra S.B.O.S. & H.S. Education v. Paritosh* (Supra), *J.P.Kulshreshta v. Allahabad University*^ : (1980)1ILLJ175SC , *State of Uttar Pradesh v. D.K.Singh* : AIR 1987 SC190 , wherein the Supreme Court laid down that in matters of impact on academic bodies, the views of educational experts have great bearing and that Courts must be cautious in dealing with such matters. Therefore, the submission of the learned Advocate-General commends itself to us, however, subject to the rider that any Legislation, Rule or Government instructions which are arbitrary and ex facie impinge on fundamental rights can always be

looked into by the Court not on the ground that they are pure and simple policy options of the State, but on the ground that such policy decisions also have legislative character.

44. In addition to the cases dealing with general principles of judicial review of policy we may also refer to specific cases where the scope of judicial review of reservation policy was the gravamen. It is needless to add that identification of backward classes, the method and manner of providing reservation, implementation thereof or besides being matters of policy do require some expertise (See *Indra Sawhney*). This is more so, in the matter of admission to educational institutions. Article 16(4) contains guidelines for providing reservation in public employment, but Article 15(4) only says that any 'special provision' can be made for advancement of educationally backward class citizens. In *Minoo Noazer Kavarana's* case (*supra*) the Supreme Court was dealing with a case where the Government of Maharashtra adopted a method of filling up 70% regional seats before filling up 30% seats meant for candidates outside Bombay. The same was held to be unreasonable by Bombay High Court which directed first to fill up 30% seats. The Apex Court while allowing appeal by the State observed as under:.....The question whether 70% of seats or 30% of seats should be filled up first is a question which should be left to the discretion of the Government. In our opinion, this aspect is not within the purview or the jurisdiction of the Court.

We do not find any unreasonableness or impropriety in the State Government's decision to fill up 70% of seats first. The High Court was not, therefore, justified in directing admission on the basis of filling up 30% of seats first and, therefore, 70% of seats and such direction has created some complications in the matter,

45. In *Chandigarh Administration, v. Manpreeth Singh*, : AIR 1992 SC435 , the Apex Court considered the question whether it is proper for the High Court under 226 to issue directions to the authorities to modify the prospectus in relation to reservation of seats in engineering colleges in favour of children and spouses of military and paramilitary personnel. While holding that in exercise of power under Article 226 the High Court should not overstep well recognised bounds of its jurisdiction held that the High Court power is to invalidate the discriminatory rule

and it cannot itself reframe the rule though it can direct the authorities to reframe the rules.

46. In *Indra Sawhney*, His Lordship Jeevan Reddy, J., while directing all the States to constitute permanent body to deal with inclusion and exclusion of backward classes also observed that the Courts are not equipped to deal with such matters. In *Ajay Kumar Singh v. State of Bihar* : [1994]3SCR57 , the same learned Judge observed that it is for the State to evolve a reservation policy under Article 15(4) and unless it is unreasonable under Article 15(4), the Court cannot interfere with such policy.

47. As noticed paragraph 6 of the impugned G.O. directs the Commissioner of Technical Education to take necessary steps for sending draft amendments. This is explained in the counter-affidavit filed by the Secretary to Government in Higher Education Department. If the Government which is competent even to take action laying down policy decision without resorting to the Legislation or subordinate legislation, if by abundant caution desire to introduce amendments we cannot find fault with the same. Even if the EAMCET Rules are not amended still the Government is entitled to enforce its policy decision having regard to the judgment of the Apex Court as well as this Court. Needless to point out that under Article 141 of the [Constitution of India](#) the law declared by the Supreme Court is binding on all authorities and under Article 144 of the [Constitution of India](#) all civil and judicial authorities in the territory of India shall have to act in accordance with the decisions of the Supreme Court. For these reasons, we hold that the policy decision contained in the impugned G.O. is not contrary to the Act and/or EAMCET Rules and on that ground the impugned G.O. does not suffer invalidation. Points 1 and 2 are answered accordingly.

In Repaints 3 and 4:

48. In the context of consideration of these two points we need to examine the relevant case-law of the Supreme Court as well as High Court. We also need to address the questions (i) whether the latter part of paragraph 5(ii) of the impugned G.O. violates Articles 14 and 15 of the [Constitution of India](#), (ii) whether the rule of sliding does not apply to a course which has different branches in different

colleges and (iii) whether such rule of sliding enabling only another same reserved category student to take the seat vacated by meritorious reserved category candidate, is not unreasonable and arbitrary.

RELEVANT CASE-LAW:

49. The Preamble to the Constitution proclaims to secure justice to all which includes social justice, economic justice and political justice and equality of opportunity and equality of status. Part IV contains directive principles. All pervasive governance by the State shall be directed to achieve goals set out therein. Articles 38, 39 and 46 aim at securing, equality of opportunity and social justice. In furtherance of concept of social justice Articles 14, 15(1) and 15(4) enable the State to make 'special provisions' in regard to admissions in educational institutions for advancement of Scheduled Castes and other socially and economically backward class citizens. Likewise as per Article 16(4) nothing shall prevent the State from making 'any provision' for adequate reservation of appointments or posts in favour of any backward classes citizens under the State. These provisions enable to formulate policy in the direction of affirmative action.

50. The affirmative action by the State has an equalising principle. As a measure of providing equal opportunity it may involve many steps and many methods. The affirmative action or positive discrimination by the State is by way of implementing a special policy targeted at downtrodden class of citizens. There are three basic types. First, there are reservations, which allot or facilitate access to value posts or resources. The most important instances of this type are reserved seats in Legislatures, reservation of posts in Government services and reservation of places in academic institutions. Second, there are programmes for provision of scholarships, land allotments, grants for health care etc. Third, there are special protections like prohibiting exploitation of Scheduled Castes and Scheduled Tribes by others, See 'Law and Society in India, by Mark Galanter : Oxford India paper Book; 1992;p.186. The provision of reservation in Legislatures is mandatory and the provision of reservation in academic institutions and public employment is not mandatory. Articles 15(4) and Article 16(4) are enabling provisions in discharge of the duty of the State to provide equal opportunities to a class of citizens. (See Ajith

Singh II v. State of Punjab, : AIR 1999 SC3471 . Nonetheless if any provision is made for special treatment of SC/ST/BC it must be treated as device to usher de facto equality.

51. In Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College, : [1990]2SCR843 (DB), it was held:

State is enjoined not to deny to any persons equality before law and equal protection of the law within the territory of India. Where it is necessary, however, for the purpose of bringing about equality of opportunity between those who are unequals, certain reservations are necessary and these should be ensured. Equality under the Constitution is a dynamic concept, which must cover every process of equalization. Equality must become a living reality for the large masses of the people. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality-Existence of equality of opportunity depends not merely on the absence of disabilities but on presence of abilities. It is not simply a matter of legal equality. De jure equality must ultimately find its *raison d'être* in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full of his natural endowments of physique, of character and of intelligence,

52. In V.Raghuramulu v. State of Andhra Pradesh, AIR 1958 AP 129, and P. Sitdarsan v. State Of Andhra Pradesh, AIR 1958 AP 569, Chief Justice Subba Rao

(as he then was) speaking for the Division Bench adverted to the question 'whether prohibition of Backward Classes to compete with other categories violates Articles 15 and 29(2), Article 29(2) provides that no citizen shall be denied admission into any educational institution- maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them of the [Constitution of India](#). The Court categorically held that the students belonging to Backward Classes have all equal rights guaranteed under the Constitution and they cannot be denied the right to compete with other general merit candidates.

53. In Raghuramulu case two petitioners of Telangana Region sought for a Writ of Certiorari to quash the proceedings relating to selection of candidate to M.B.B.S. Though they came up in selection they were denied seats on the ground that the maximum seats allotted to the backward classes were exhausted by the other high ranking backward class students. It was found that two of the selected backward classes candidates got more marks than two candidates who are admitted for general seats. In this background, it was urged before the Court that backward class candidates were denied fundamental rights under Articles 15 and 29 of the Constitution and as they were selected for Backward Classes seats though they were more meritorious than the general candidates. The great Chief Justice observed that prohibition under Article 29(2) of the Constitution cannot prevent the State from making any special provision under Article 15(4) for the advancement of socially and educationally backward classes citizens and therefore any special provision made by the State should be for the advancement of such citizens and not to abridge or retard their progress under the [Constitution of India](#). To elucidate dynamics of this principle the Court illustrated this as under.

The State may allot a minimum number of seats in professional colleges for backward classes. This provision would be for the advancement of the backward classes for irrespective of the marks they secured, certain seats would be guaranteed to those classes. But, if in a particular locality the members of the backward classes secure high marks and are able to compete with students of other classes they would not be deprived of their right to get admission into colleges beyond the quota allotted to them.....Such a provision would certainly be

for the advancement of the backward classes. On the other hand, if a maximum be fixed, instead of providing for the advancement of those classes in the contingency visualized above, it would retard their progress; for students of those classes who secure more marks than students who compete for the general seats and get less marks than students belonging to their classes would not get seats.

54. Accordingly, the Court held that prescribing 'maximum percentage' of reservation which purports to be for the advancement of backward classes, abridges the rights by denying the fundamental rights under Article 29(2) to get admission into educational institutions.

55. In Sudarsan's case the Division Bench of A.P. High Court speaking through Chief Justice Subba Rao again considered a Rule which permitted the admission at two stages; one stage where backward class students were considered for merit seats as well as reserved seats and the second stage where backward class students compete for seats exclusively reserved for backward classes. After referring to Raghuramulu case, the learned Chief Justice observed:

On the other hand, if the selection is made in two different compartments in such a way that some boys belonging to the backward classes are allowed to compete for the general pool and some for the reserved seats, it would cause great hardship to the boys belonging to other communities. The rule, therefore, can be worked out in such a way as to protect the interests of students of the backward classes without at the same time causing prejudice to students of other communities.....This could be achieved by pooling all the candidates together and guaranteeing minimum seats for those belonging to the backward classes. To illustrate: If there are 100 applicants for selection to the Medical College, they would be arranged in the order of merit and even if more than 15 per cent of the candidates belonging to the backward classes could be selected on merit alone, they would be so selected.....If they fell short of that number, they would be selected to take up their number on the basis of merit inter se between them, though they got less marks than boys belonging to other communities. This process will protect students of backward classes without doing any injustice to the forward ones.

56. We may observe that the principle laid down in Raghwamulu and Sudersan cases ultimately became law of the land when the Supreme Court in Indra Sawhney laid down the same principle. In paragraph 94-A (of AIR) of the judgment it was held that members belonging to reserved classes, if selected in the open competition filled on the basis of their merit cannot be counted against the quota reserved for them and that they will be treated as open competition candidates.

57. In Ashwin Prafulla Pimpalwar's Case (supra) Bombay High Court considered the effect of amendment made to the Rules while the admission process to medical courses was in a mid way. The submission was that the students who had advantage under earlier rules cannot be denied the same, by reason of legitimate expectation by retrospective implementation of the new rules. Bombay High Court repelled the contention in the following manner:

Merely because of a promulgation of a particular rule or order by the Government authorities, a student particularly aspiring for a post-graduate degree, and that too in a professional course, cannot with grace or legal force contend that he could have a legitimate expectation in the continuity of that advantage or benefit arising from the order which held the field at particular time despite an overriding or even a reasonable need of change. When viewed from the point of view of the duty of a Government to effect appropriate changes, whether it be in the matter of legislation, pure and simple, or in relation to its executive instructions, if and when circumstances warrant the same, such a restriction would be to make societies stagnant and the Government non-functional,

58. It was further held that the prospectus containing admission regulations issued by the Government are not unalterable on subsequent occasions if circumstances justify the same.

59. In Ajay Kumar Singh Case (supra) it was contended that candidate seeking admission to post graduate medical course cannot be extended the benefit of reservation as they already enjoyed such benefit at the stage of their admission. It was urged that a person who availed reservation in M.B.B.S should be treated as meritorious candidate and he could as well be admitted on his own merit in general quota. In effect, the submission was that a candidate who passed

M.B.B.S. and belonging to reserved class should be treated on par with general candidates and there should be no further reservation. This was rejected by the Supreme Court and it was laid down :

A candidate who is seeking reservation at the stage of admission to postgraduate course may not have availed of the benefit of reservation at the stage of admission to M.B.B.S he could as well have been admitted on his own merit in the general quota (open competition quota); but because the competition at the level of postgraduate medical courses is extremely acute, he may have to seek the benefit of reservation. Therefore, the assumption that a student seeking benefit of reservation at the stage of admission to postgraduate medical course has already enjoyed the benefit of reservation once previously is not necessarily true. Secondly, there is no rule under Article 15(4) that a student cannot be given the benefit of reservation at more than one stage during the course of his educational career. Where to draw the line is not a matter of law but a matter of policy for the state to be evolved keeping in view the larger interests of the society and various other relevant factors. Unless the line drawn by the state is found to be unsustainable under the relevant article, the Court cannot interfere,

60. While interpreting the words 'any special provision' occurring in Article 15(4) of the Constitution it was observed that 'these words are wide and do certainly take any provision for reservation of seats in the educational institutions.' While relying on *Indra Sawhney* it was observed that Articles 14 and 16(1) permit classification for bringing about and ensuring equality and in that direction Government can always take measures including reservations and that it is for the Government to decide as to what are the special provisions to be made for a particular class having regard to the facts and circumstances of given situation.

61. In *R.K. Sabharwal v. State of Punjab*, : [1995]2SCR35 , a Constitution Bench adverted to the question as to whether the Government instructions providing for reservations would become inoperative if more than required percentage of scheduled caste candidates are appointed in a cadre on their own merit by competing with general category candidates The Supreme Court laid down that (i) when roster points are reserved for Scheduled Caste candidates they are to be

filled up from only amongst the members of such reserved categories; (ii) the candidates belonging to general category are not entitled to be considered for reserved posts; (iii) the reserved candidates, however, can compete for unreserved posts, if they come up in the merit and (iv) in the event of appointment of reserved candidates to the posts in general category (general roster points) their number cannot be added for working out percentage of reservation provided in the Government instructions. The Court also ruled percentage of reservation prescribed by the Government shall have to be followed strictly. It is apt to extract the following from the judgment of the Apex Court.

When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/ promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/ promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition,

62. The various cases thus far noticed from Raghuramulu to Sabarwal case deal with a situation as to how a meritorious reserved candidate should be dealt with. Before we take up specific cases dealing with rule of sliding, it is necessary to summarise the principles as under:

(1) The reservations under Article 15(1) read with 15(4) or Article 16(1) read with 16(4) enable minimum number of SC, ST and BC candidates to get admission in

educational institutions or public employment. The reservation is minimum reservation and not maximum reservation.

(2) All the citizens including SC, ST, and BC candidates have the protection of the Constitution against discrimination in matters of education, especially Articles 14, 15 and 29 of the [Constitution of India](#).

(3) If a reserved meritorious candidate is not permitted to compete with general candidates it would amount to denying fundamental right under Articles 15 and 29(2) of the Constitution on ground only of religion, race, caste, language etc.

(4) In educational institutions meritorious reserved candidates on being admitted to positions in such institutions, the seats/positions given to them cannot be reckoned for the purpose of counting the minimum percentage of reservation of seats earmarked for reserved candidates.

(5) In public employment SC, ST and BC candidates if they got selected in open competition field on the basis of their merit, they cannot be counted against the quota reserved for SC, ST and BCs and they will be treated as open competition candidates and excluded from the number of posts reserved for them.

(6) Though reserved candidates can compete for open competition posts or seats such of them cannot be counted for the purpose of percentage reserved for them and under all circumstances, the general category candidates are not entitled for consideration to the reserved posts or seats.

(7) In a given selection to posts or admission programme the minimum percentage of reservation for reserved classes under no circumstances can be reduced on the ground that adequate number of reserved candidates have already got positions in the open competition.

(8) The general category candidates cannot compete for the reserved posts or seats though candidates belonging to reserved categories can compete for general seats.

63. As we presently point out the general principles which we have deduced from various cases are no different in relation to their application to the sliding rule. We may analyse four cases decided by the Supreme Court in this regard. These cases are Ritesh Shah v. Y.L.Yanml (supra), State of Bihar v. Neethi Chondra (supra), Rajiv Mittal v. Maharshi Dayanand University (supra) and Preeti Mittal v. Gaganjot Kaur Saira (supra).

64. In Ritesh Sah case the Supreme Court referred to Indra Sawhmy, Sabanval, Ajay Kitmar Singh And Ashwin Prafulla Pumpalwar cases and categorically laid down that the sliding rule not only ensures equality among reserved candidates and that it does not results in any kind of injustice to the general category candidates. As both sides relied on the judgment, it is necessary to refer to the said judgment in some detail.

65. Ritesh Sah arose in the context of admission to first year M.B.B.S. Course. The Supreme Court having regard to rule position visualized a situation as follows. Out of one hundred seats 15 seats were reserved for candidates who come through All India Entrance Test. In the remaining 85 seats 50% seats were earmarked for reserved categories and 50% remained for general category. Out of 50% general seats 30% seats were distributed among the State level candidates and 70% for the regional candidates. At the stage of admission option is called for college. At that stage if a candidate belonging to reserved category is considered by virtue of his merit and is admitted, it could be possible that he may not be admitted in a Government college and/or in a better college. When admissions for 50% reserved seats are considered for reserved candidates with lesser merit than a candidate who was considered for 50% general quota, would get admission in the reserved category though they are of less merit. This would cause lot of hardship to more meritorious reserved candidates. The facts in the case show that that is what precisely happened. Respondents 5 to 36 belonging to reserved category though could be admitted on the basis of marks secured in the open merit they were in fact admitted against reserved category and by reason thereof Ritesh Sah, the petitioner before the Supreme Court who was reserved category candidate, was denied seat. Before the Supreme Court the contention of Respondents 5 to 36 was that if they are not allowed to exercise option for being

admitted against reserved seats, they will be forced to take admission in either private college or they will be debarred from getting admission to the reputed colleges. The Apex Court noticed the procedure which, we may say, is similar to the position obtaining in the cases before us. To mitigate this peculiar 'face of injustice', after referring to various decided cases as well as procedure for admission under the rules framed by the Government of Maharashtra, the Apex Court laid down as under:

In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate,

66. As laid down by the Supreme Court the principle which we may call Ritesh Shah principle operates in the following manner.

(A) A student belonging to a reserved class who is entitled to be admitted on the basis of merit cannot be considered or admitted against seats reserved for that category;

(B) All the same, a provision may be made whereunder among the reserved candidates, more meritorious will get advantage of opting for better college and better course and less meritorious reserved candidate will have to reason of enforcing principle (A); select among seats which are vacant;

(C) The principles (A) and (B) can effectively be implemented at selection and admission stages, - (i) find out more meritorious reserved category candidates who would come up in open merit; (ii) ask their option for admission into college of their choice where seats are kept reserved for reserved category; and (iii) consider the option of less meritorious category for the seats in whichever colleges they are available; and

(D) After completing the above stages, then one has to compute the percentage of reservation by not including the meritorious reserved 1 category candidates percentage of reservation.

67. Ritesh Shah principle not only explains the concept, but also lays down as to at what stage percentage of reservation is computed. It has to be computed after the selection and admission process is gone through and not at the beginning. It also takes into consideration that the meritorious reserved candidate is deemed to be an open category candidate only for the purpose of percentage of reservation at selection stage and not for the purpose of admission to a college of his choice. A point is raised before us that meritorious reserved candidate when he vacates seat and opts for a college/ course of his choice he is vacating seat reserved for open candidate and therefore only meritorious open candidate should be given the choice. The merit of this contention is considered *infra*.

68. The next case we are required to notice is *Neethi Chandra (supra)*, which arose out of the judgment of a Division Bench of Patna High Court in *Neethi Chandra v. State of Bihar* AIR 1996 Patna 88. We may notice the controversy from the decision of Patna High Court. In the said case, the complaint was that in P.G Medical admissions by virtue of operation of relevant rules, meritorious candidates of reserved category who are admitted in open seats in general category are meted out with injustice, in that, though they have better merit they are forced to take admission in inferior course/college while less meritorious candidates of

reserved categories by reason of their reservation are admitted to better course and better college. This happened because a more meritorious reserved candidate would be last in the merit list whereas a less meritorious candidate of reserved category will be first in the open merit list of reserved candidates. The Division Bench came to a conclusion that the procedure contemplated in the rules results in hostile discrimination. Therefore, the Court observed as follows:....If reserved candidates are admitted at the first instance on merit against reserved seats in their respective category and those of the same category also qualifying for admission, by virtue of reservation or otherwise, but placed below them are adjusted along with general candidates, according to merit, against open seats in the general category, the anomaly can be fully removed. At first glance it may appear somewhat incongruous but on close examination would be workable, just and proper. If the procedure is changed in the manner that the reserved candidates are first considered and admitted against reserved seats of their respective categories on the basis of the merit they will be able to get the course and college of their choice because seats are already reserved for them in each course or subject. The rest of the candidates of that particular category placed lower than them but qualifying for admission in excess of the seats reserved for them may then be adjusted against open seats in the general category along with general candidates on merit. Naturally, they will be placed at the bottom in the general category but coming as they do by virtue of the reservation or less merit, they cannot make a grievance of that. They cannot also make a grievance of the fact that by virtue of their low placement in the merit list of the general category, they are not able to get course/college of their choice. That is how the interest of reserve category candidates can be best served without violating the norm of selection and allotment of course/college on merit-choice basis.

69. The Division Bench also considered that the anomalies could be removed by following the procedure as above, by following the procedure by filling up reserved seats by admitting the reserved candidates on merit-choice and then taking up the seats in the general category which otherwise would have gone to more meritorious candidates. The Court observed as under.

A person may qualify for admission in more than one category. If a candidate belonging to Scheduled Caste or Tribe or Backward Class comes on merit, he is entitled to be admitted in both categories. By forcing him to take admission in the general category, which may result in disadvantageous or less advantageous position would not be just and proper at all. In such case therefore, endeavour should be to ensure that he gets full benefit of reservation. That is possible only when the reserved seats are filled up first so that the reserved candidates may effectively and fully exercise their option.

70. Against the judgment of the Patna High Court, the State filed civil appeal by special leave. It was contended before the Supreme Court that if the mode and method of the High Court decision is followed, all students of reserved category will have to be admitted though there may not be adequate number of vacancies for them and that all less meritorious candidates of reserved categories placed at the bottom of the list will be placed in the college of last choice which will violate Article 14 of the Constitution. The Apex Court rejected the said contention. The principle that applying reservation to the disadvantage of meritorious reserved candidate results in hostile discrimination was upheld. The case was in relation to admissions to various specialities in P.G. Medical Courses like M.D., and M.S., where seats are very less. If the principle is applied in such a manner that both the meritorious reserved candidates as well as less meritorious candidates are admitted in the P.O. courses by applying sliding rule, a situation may arise where limited seats which are generally not more than 8 to 16, would go to reserved candidates. This is because of the less number of seats. Therefore, the Supreme Court while agreeing that denying the choice of college to a more meritorious reserved candidate would violate the protective discrimination further directed that such a choice of college should be extended for a more meritorious reserved category candidate if he concerns for being considered as a general candidate on merit-cum choice basis for allotment of college/institution and subject.

71. We have mentioned that there are 37,000 seats to be filled up in Government Colleges and Private Colleges. Each branch consists of seats ranging from 40 to 60. Therefore, it is unimaginable that a situation would come where all the seats in a branch/ course would be filled up by candidates belonging to reserved

categories either on their own merit or by reason of reservation. We must not lose sight of the fact that 15%, 6% and 25% seats alone are reserved for SC, ST and BCs respectively. Therefore, the situation which arose in Neethi Chandra case cannot be visualized in these cases. The principle in Neethi Chandra in our considered opinion is not an authority to support the submission made before us to the effect that the seat vacated by more meritorious reserved candidate should always go only to the next meritorious candidate from open category. A mere reference to para 5(i) and 5(ii) make it clear the method adopted in the engineering admission procedure is altogether different.

72. In *Rajiv Mittal v. Maharshi Dayanand University* (supra) the Supreme Court upheld the system of counselling for the purpose of granting admission as most equitable one. After referring to *Indra Sahawney* the Supreme Court upheld the principle whereunder a candidate applying for reserved category and open category can be considered first in the open category and if he is not selected there, he can be considered for reserved category in MBBS admissions. The said principle was adumbrated in Note (2) of 'admission information brochure' of the concerned University. The Supreme Court also held that such a rule of sliding can be extended only at the time of first counselling and the same cannot be applied when counselling is held for filling up the seats which fell vacant after admissions. Interpreting Note (2) of the 'broucher' the Apex Court held:..This note, in a case like (the present, will have application only when a reserved category candidate is in a position to secure, and secures admission to a seat in the general in the same counselling in which the seat is available to him in the reserved category. It is for this reason that the first counselling for the general category candidates was held on 9-9-1996 while the first counselling for the reserved category candidates was held on 10-9-1996. In other words the first counselling was spread over two days so that if any reserved category student had managed to secure admission to the general category seat then he would not be entitled to adjustment against the reserved seat.....As the aforesaid Note 2 was not applicable to a case like the present, where Sunil Yadav having failed to secure admission to a seat in the open category in the first counselling for that category but had secured admission to the reserved seat in the same counselling, the question of his being shifted or being regarded as a candidate to the open category seat which had

become available only after he had secured admission did not and could not arise and, consequently, the appellant was rightly granted admission to the general category seat in the Rohtak Medical College.

73. Preeti Mittal's case (supra) was also concerned with M.B.B.S. admissions in government medical college, Chandigarh. Out of 50 seats available 15% (seven seats) were being filled from all India quota seats through a combined entrance test conducted by the C.B.S.E. and the remaining 85% seats were filled up from Chandigarh pool. The relevant clause in the admission notification provided that if a Chandigarh pool candidate is entitled to admission by reason of merit, such candidate can be admitted in all India pool. The question before the Punjab & Haryana High Court, from which the case came up before the Supreme Court, was whether Chandigarh administration was right in filling up 85% from Punjab pool out of merit list and filling up remaining 15% from all India pool. The High Court directed the administration to reframe the merit list by filling up All-India pool in the first instance and later the candidate from Chandigarh pool. The High Court also set aside the seat given to SC candidate of Chandigarh on the ground that no SC candidate in All-India pool on the ground that no SC candidate from all India pool was available. It was also directed seat reserved for SC candidate in all India pool should be given to general candidate from All India pool. In the appeal against the judgment of the High Court, the Supreme Court inter alia considered the question of sustainability of said direction to give available SC seat to the general candidate from All India pool instead of SC candidate from Chandigarh pool. It was held:

There is no indication that the seat belonging to Scheduled Caste category in a particular pool should go to General category of that pool. Clause 3 generally says that if a Scheduled Caste candidate is not available the seat must go to General category. This clause read with clause 4 of the clarifications corresponding to clause (d) of the notification, will clearly show that if a Scheduled Caste candidate is not available in the All India pool that must go to a Scheduled Caste candidate in the Chandigarh pool, if available. . Therefore, the High Court was not right in directing that the seat belonging to Scheduled Caste category in the All India pool be given to General category in the same pool.

74. The conspectus of the judgments in Ritesh Shah, Neethi Chandra. Rajiv Mital and Preeti Mittal is that when sliding rule is applied a seat vacated by more meritorious candidate belonging to reserved category should only be given to a less meritorious candidate belonging to reserved category, as the former is given option of the college/ course which normally would have been gone to a less meritorious candidate if there is no rule/instruction permitting such sliding.

DECISIONS OF THE A.P. HIGHCOURT:

75. The admission programme as mentioned for professional courses in Andhra Pradesh is governed by at least two legislative enactments; statutory rules made thereunder and the Presidential Order made under Article 371-D of the Constitution as well as the Government instructions issued from time to time. It may be due to such inevitable complexities that every academic year generates with regular recurrence spurt of litigation in this Court which has become an annual ritual. Even before the euphoria that litigation is given a quietus dies down, another round of litigation comes up before the Court. This litigation necessarily gives rise to complex social, constitutional and legal questions on which there is always sharp division of opinion in the society. More often than not the Government adopts safe course, leaving it to the Courts to resolve the controversy.

76. Whether Presidential Order provides 'local area-wise reservation' or 'institution-wise reservation' or 'course-wise reservation' and what are the principles to be followed by the authorities while making admissions to professional courses. These questions were considered by this Court in Nitesh Narayan, Chinnayya, Raghavendra-I and Raghavendra H cases (supra). In Nitesh Narayan, a learned single Judge of this Court considered the question whether 85% reservation for local candidates in a local area should not only be area-wise, but also institution-wise. The learned Judge held that the reservation should be institution-wise and course-wise. It also held that admissions shall be made first for local candidates to local area and thereafter admissions for unreserved quota should be made after pooling up unfilled seats if any. It was also held that while admitting the candidates belonging to reserved candidates, the principles laid down by the Supreme Court

in Neethi Chandra should be followed. The Division Bench in Chinnayya in writ appeal, however, did not agree with the learned single Judge. It was held that the seats should be filled up by reserving 85% seats in each college with local candidates duly keeping local reservation in mind. The Division also observed that the principles laid down by the Supreme Court in Ritesh Shah should be followed and the authorities were directed to follow the procedure laid down therein which is as under.

1. The Common Entrance Test Committee shall prepare a merit list in accordance with Rule 6 of the EAMCET rules notified in G.O.Ms.No.184 Education (EC-2) dated 20-8-1993.

2. The competent authority shall prepare merit lists as contemplated under Rule 6(1)(a), (b), (c), (d) and (e) in respect of candidates who applied for admission to Government/ University Professional Colleges and Private Professional Colleges.

3. The Selection Committee or the competent authority shall, while allotting the candidates from out of the lists prepared as per Rule 6(1) (b), (d) and (e) to each individual college, see that 85% of the seats in such college are filled with local candidates and the remaining 15% unreserved seats with open candidates, maintaining the rules of reservation for SC, ST and BC communities and other reserved categories specified in clause (b) of sub-rule (4) of Rule 8 both in respect of local candidates as well as open candidates.

4. In respect of State-wide institutions, 85% of available seats should be filled up by the concerned authority and the concerned authority shall be free to follow the other relevant rules or regulations that have not been specifically dealt with herein.

5. In case of any doubt that may arise in the course of implementation of the Presidential Order, the EAMCET Rules or any other rule or regulation, it is open for the UHS to approach the Government for appropriate directions.

77. Again, during the academic year 1998-99, the question cropped up before this Court. This time, the University of Health Sciences directed all the candidates belonging to Backward Classes to give option whether they desire to be

considered as general candidates or reserved candidates. In the process, meritorious among the Backward Classes though were entitled to be admitted to general category seats in the open competition were admitted in the quota reserved for Backward Classes. The candidates belonging to Backward Classes who were deprived of the seats, filed writ petitions. In Raghavendra I, the learned single Judge by placing reliance on Ritesh Shah invalidated the procedure adopted by the University of Health Sciences. The judgment of the learned single Judge was subject-matter of writ appeal in Raghavendra II before a Division Bench. The Division Bench affirmed the judgment of the learned single Judge and dismissed the appeals filed by the University after noticing rules (EAMCET rules) as well as various precedents holding that Ritesh Shah principle apply with all force when the meritorious candidates belonging to reserved categories are allowed the option to choose the college of their choice.

78. The learned single Judge in Raghavendra-I directed that the admissions already made if unsettled would cause hardship to the admitted candidates and therefore the authorities should provide admission against such number of seats in which meritorious reserved candidates were admitted and admit the petitioners therein after obtaining appropriate permissions for creating additional seats. In Raghavendra IT, the Division Bench modified those orders of the learned single Judge as follows:

In a situation like this, all that the Court can say is, if the authorities want to allow them to prosecute their studies, at the same time comply with the orders of this Court made in earlier writ proceedings. The selection shall be on the basis of local area or University-wise. If increasing of intake is necessary, the authorities may make a request to the concerned authorities to increase the intake as they did earlier or replace the less meritorious open category candidates by admitting the meritorious Backward Class, Scheduled Caste and Scheduled Tribe students. Further, fix the meritorious BC, SC and ST category students strictly adhering to the principles laid down by the Supreme Court in the Ritesh R. Shah 'S case (5-A supra) and the rules referred to above, namely, accommodate meritorious students belonging to SC, ST and B.Cs. While so doing if the other students allotted in the OC category are to be deleted one cannot escape from the same.

The petitioners are entitled by virtue of the ranking for admission under OC category to the college of their choice and they shall be admitted within two weeks from the date of this order. They are entitled for condonation of shortage of attendance. The resultant equal number of vacancies shall be filled up by drawing the candidates belonging to the Backward Class, ScheduledCaste and Scheduled Tribe communities who will be next eligible.

79. Against the judgment of this Court in Raghavendra-II, the NTR University of Health Sciences filed an appeal before the Supreme Court being Civil Appeal No.3699 of 2000. The Supreme Court referred to the above observations of the Division Bench and disposed of the appeal by order dated 1-8-2001 observing;

However, in the course of making this order we made certain observations. It is unnecessary to go into various contentions urged on behalf of the appellants inasmuch as the students had been admitted to the respective colleges as directed by the High Court. In the circumstances no useful purpose would be served by examining the contentions urged before us which are on the face of it are only ad hoc for the purpose of the case. In the circumstances leaving the questions of law open, we dispose of this appeal.

80. The learned Counsel for the petitioners have placed before us the Supreme Court's order to contend that by reason of the said order, the question is wide open and this Court may consider the question of applicability of the principles laid down in Ritesh Shah for the purpose of Engineering admissions. Insofar as the application of the principles of Ritesh Shah to MBBS admissions is concerned, it is not disputed by the learned Counsel for the petitioners that the law laid down in Ritesh Shah would apply thereto. Even in relation to Engineering admissions, as noticed at the outset, the petitioners have not raised any objection with regard to paragraph 5(i) or the first two parts in paragraph 5(ii). The objection is that though a meritorious candidate belonging to reserved category is given option and vacates the seat to go to a college and/or branch of his choice in a seat reserved for reserved category, the seat vacated by him should be given to the next meritorious general candidate and not to thenext meritorious candidate belonging to the same reserved category. In the background of these principles discussed

thus far, we have to address the questions which we have already indicated under points 3 and 4.

(i) Whether the latter part of paragraph 5(ii) violates Articles 14 and 15 of the [Constitution of India](#)?

81. A two-fold submission is made by the learned Counsel for the petitioners. First, they contend that a meritorious reserved candidate belonging to reserved category is required to be admitted as OC candidate. If he is admitted as OC candidate in a branch and vacates the seat by opting for a college/ branch of his choice, the seat vacated by him is a OC seat and therefore the same should be filled up by the next meritorious OC candidate only. They contend that if a OC seat is given to a reserved category candidate, it would violate the principle of equality enshrined in Articles 14 and 15 of the [Constitution of India](#). Secondly they contend that as per the rules, the seats are allotted to OC category from out of the State-wide common list and/or local area-wise common list and if a less meritorious SC/ST/BC candidates admitted to the seat vacated by a more meritorious candidate of the said category, the same will be contrary to Act No.5 of 1983 as well as statutory rules. In our considered opinion as we presently enlarge both these submissions are misconceived.

82. In *Indra Sawhney* (supra), the Supreme Court considered the scope and extent of reservations that can be provided under Articles 15(4) and 16(4) of the [Constitution of India](#). In paragraphs 58 and 60 (of AIR), the Supreme Court observed that Article 16(4) contemplates all forms of special provisions like preferences, concessions, exemptions and reservations; reservation being the highest form of special provision while preferences, concessions, exemptions are of lesser form. While holding that Article 16(4) is exhaustive of the very concept of reservation, it was also observed that even under Article 16(1), there could be reservations, concessions and preferences in favour of Backward Classes subject to the State satisfying certain conditions. The following observations are apposite.

Merely because, one form of classification is stated as a specific clause, it does not follow that the* very concept and power of classification implicit in clause (1) is exhausted thereby. To say so would not be correct in principle. But, at the same

time, one thing is clear. It is in very exceptional situations, and not for all and sundry reasons - that any further reservations, of whatever kind, should be provided under clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress a specific situation.

83. As per Section 3 of the Act as well as paragraph 9 of the Presidential Order, an obligation rests with the State to provide for special provisions to educationally Backward Class people like Scheduled Castes, Scheduled Tribes and Backward Classes. In so doing, the State has adopted a method so that 'positive discrimination device' intended to uplift these categories of people will not work to their disadvantage. 'The submission that it violates Rule 6 and Rule 7 cannot be countenanced. Rule 6 of the Rules lays down that after the declaration of results of EAMCET, merit lists will be prepared like State-wide common merit list, Region-wise common merit list., concerned minority merit list, caste-wise and community-wise merit list etc. When a meritorious candidate belonging to reserved categories is admitted as a OC candidate, the same does not violate any rule. Indeed, it is in accordance with the law laid down by the Supreme Court. Similarly, when such a candidate is given option to choose better course and better college as per Ritesh Shah principle, the resultant vacancy must be filled up only by a next candidate in the reserved merit list. The reason is that the meritorious candidate who vacates the seat in the OC category in one college/branch is replacing a reserved candidate only and not a OC candidate. That is the reason why in Ritesh Shah, the Supreme Court held that at the time of selection itself option is given to the meritorious reserved candidate and not after admission. However, for the purpose of computation of reservation percentage, a meritorious candidate is treated as OC candidate. Only to a limited extent he is deemed to be a OC candidate. As otherwise, he continues to-be a candidate belonging to either SC/ST/BC and he is entitled for all concessions, relaxations, scholarships etc. Merely because he is admitted as a OC candidate by virtue of his merit, the petitioners cannot contend that they being OC candidates, the seats vacated by them are given to them. We may indicate that as per Rule 7(7) counselling is done for 'selection and allotment'. What is actually done is at the stage of selection is that merit candidate (reserved category) is given option for allotment. When at the stage of selection such option

is given, there cannot be any grievance that element of non-merit is introduced in the merit list. Needless to add that 'deemed provision' cannot be construed beyond the purpose for which such provision exists.

84. In this context, the nature of right claimed by the petitioners becomes relevant. It is well settled (See *Unnikrishnan v. State O/A.P.*, AIR 1993 SC 2178) that under the Constitution a citizen has a fundamental right to education up to the age of 14 years only. There is no fundamental right to technical education or professional education. Indeed, Rule 7(1) and 7(7) of the rules are to the effect that mere appearance in the entrance test and obtaining rank in the merit list does not entitle a candidate to be considered for admission automatically into any course/branch/institution unless he satisfies the rules and regulations of admission. As per Rule 7(6), at the time of counselling, (stage of selection) as and when each candidate gets his turn for interview in the order of merit, choice of institution and course of study will be given to him depending upon the availability at the point of time with due regard to the eligibility of the candidate for seat in a particular local area for a particular reserved category candidate.

85. As per Rule 7(6) (read with the principle laid down in *Ritesh Shah*), when, a meritorious reserved candidate enters the counselling room and opts for a branch/college of his choice among the reserved candidates, he would be given such choice to choose any of the two colleges where reservation is available i.e., the college of his entitlement and the college of his choice. Rule 8 as held by Division Bench in *Chinnayya* mandates that the reservation has to be maintained in both colleges and local area. Therefore, though he joins the college of his choice in a reserved seat, he will be deemed to have been selected to the college of his entitlement as an OC candidate. If such a meritorious candidate opts out from College A in preference to College B thereby replacing a candidate from the same reservation category in College B, the percentage of reservation in the latter college will not be maintained. To avoid such a situation and so as to maintain the reservation in the course as well as local area, less meritorious candidate of College 'B' is given a seat in College 'A' which is vacated by the meritorious candidate. This principle, in our considered opinion, in fact, is 'dynamic equality in practice' and there cannot be any objection to the same. We have already referred

to Ajay Kumar Singh 's case (supra) in which it was observed that Article 15(1) does not prohibit giving the benefit of further reservation to the reserved candidate. Further, as per Rule 7(7), a candidate has a right to be considered fairly only when the seat is available. To our mind, as per the principle laid down in Ritesh Shah, more meritorious candidate and less meritorious candidate get admitted to the seats in two different colleges, the former by virtue of his option, the latter by virtue of reservation and in fact for all purposes there would be no seat available. In such a situation as per Rule 7(6) of the rules there is no question of considering candidates like the petitioners, as there would be no seat available.

(ii) Whether the rule of sliding does not apply to a course, which has different branches in different colleges?

86. The submission of the learned Counsel for the petitioners is that each Engineering branch in the colleges has to be treated as a separate course by itself and admission process has to be regulated course-wise and branch-wise. In view of this, they submit, if the principle laid down in Ritesh Shah is applied, the same would run counter to the rule of merit in professional courses. It is no doubt true that Ritesh Shah, Rajiv Mittal and Preeti Mittal deal with the cases of admission to MBBS course and the question there was the choice of better college and/or the choice between Government college and private college. We need, therefore, to address this question with reference to the Presidential Order as well as EAMCET rules.

87. The demand for a particular branch of B.E., course varies from time to time. During a given period of time, a particular branch in Engineering course may be much sought after and the same may not be the case during later years. This Court, can take judicial notice of the fact that during 1960s and 70s there was lot of demand for seats in B.E. Civil course and of late, due to computerization of the civilization seats in B.E. in Information Technology and Computer Science and Engineering branch are being much sought after. Though the Act, rules and the entire system of education treats all the courses and all the branches equally, the reason for more demand is the feeling among the students that a course in Information Technology or Computer Science & Engineering would fetch a job

immediately after education. This does not, however, mean that the individual aptitude and attitude has no role to play. There may be a brilliant high-ranking meritorious student who may not opt for Information Technology and Computer Science & Engineering courses. On his own volition, he may opt for any other course that is not much sought after.

88. We may mention that procedure for admission to professional courses like Medicine and Engineering, is a very complicated and complex process. The provisions of Article 371-D of the Constitution as well as the Order issued thereunder add to the complexity of admission to educational courses. Therefore, a highly meritorious candidate belonging to one local area, if he wants admission to B.E. course with better discipline/branch he may not be able to get a seat, because the local area in respect of which he is a local candidate may not be offering the course or though he can be considered for the 15% reserved seats in a local area, he may not come up in the merit. Therefore, any view that all meritorious EAMCET rank holders opt for Information Technology and Computer Science Engineering course will be filled up only by meritorious candidates would be irrational. These facts must be kept in view when we consider this question especially when EAMCET Rules and Presidential Order do not make any distinction between B.E., course in one branch and B.E. course in another branch.

89. The Presidential Order is intended to provide for equitable opportunities and facilities for the people belonging to different areas of the State of Andhra Pradesh. The language in Article 371-D (1) is very clear to that effect. It is not intended either to help a group of people or redress a class of students with whims of their own. Paragraph 5 of the Presidential Order provides that 85% of the available seats in every course of study in every institution and in every local area shall be reserved in favour of local candidates. The crucial words are 'course of study' and 'local area'. Course of study is not defined in the Presidential Order. Each degree course whether in Sciences, Arts, Commerce or Technology is a course of study. Every course of study may consist of branches of special study, but that branch itself cannot be called a course of study. It is true that MDBS is a monolithic course unlike B.E., or B. Tech., course which may be consisting of special areas of study like Civil Engineering, Electrical Engineering, Electronics

Engineering, Information Technology Engineering etc. Merely because there is a provision for studying a special branch in B.E. course we cannot call each branch a course of study of B.E.

90. By reason of non-obstante clause in paragraph 9 of the Presidential Order, the same is given overriding effect over the statutes, ordinances, rules and regulations. Rule 8 of the EAMCET Rules provides for reservation. The reservations provided are -Region-wise reservations as well as reservation of seats for SC/ST/BC. Sub-rule (1) of Rule 8 provides that 85% of the seats in each course shall be reserved for local candidates as specified in Presidential Order read with G.O.P No.646, dated 10-7-1979. Sub-rule (2) of Rule 8 provides that 15%, 6% and 25% of seats shall be reserved in each institution to SC/ ST/BC communities respectively. As per paragraph 10 of G.O.No.646, dated 10-7-1979 read with Annexure-III thereof, reservation is to be provided for local candidates in relation to local area at 85% in all the available seats in the course of study duly following rule of reservation for SC/ ST/BCs. The rules and the Presidential Order as well as the Government orders issued under paragraph 8 of the Presidential Order are clear that reservations for local candidates and reservation for SCs/STs/BCs are provided in all the available seats in every course of study and not in every branch. Therefore, the submission of the learned Counsel for the petitioners suffers from a fundamental fallacy.

91. The Division Bench of this Court in Chinnayya 's case (supra) has considered this question and laid down that reservation should be made local area-wise and institution-wise in each course and not branch-wise. When as a policy, the Government decided to provide for sliding in Engineering colleges in accordance with the law laid down by the Supreme Court in Ritesh Shah as well as this Court in Raghavendra-\, it is not permissible for the petitioners to contend that the sliding rule cannot apply in Engineering Courses or that each branch of the Engineering Course should be treated as a unit for the purpose of reservation. If the petitioners' contention is accepted, it would violate the Presidential Order as well as the statutory rules.

92. Yet another point raised by the learned Counsel is that such a procedure would violate rule of merit in professional courses. This question is no more res Integra. In *Ajay Kumar Singh*, following *Indra Sawhney*, the Supreme Court repelled an argument that reservations are basically ante-meritarian as under:

It is necessary to reiterate that reservation is provided only at the stage of entry and not at the stage of exit. In the matter of passing of the examination, no concession is shown to members of reserved classes. The pass marks are uniform for all. This means that even if a less meritorious student is admitted under a reserved category, he has to improve his standard and has to acquire the same proficiency as any other candidate (including the general candidates) while passing the examination. This circumstance is a complete answer to the argument of 'less merit'. No empirical study has been brought to our notice to establish that candidates admitted under reserved quotas generally lag behind in the matter of marks or proficiency in the final examinations. They may enter different categories but they come out as one single class,

93. We must accordingly hold that sliding rule also applies to Engineering courses of study and there are no reasons to hold that the sliding principle in educational admissions as unveiled in *Ritesh Shah* does not apply to Engineering admissions.

(Hi) Whether rule of sliding enabling a candidate from the same reservation category only to be admitted to the seat vacated by meritorious reserved class candidate is not unreasonable or arbitrary?

94. A reading of the impugned G.O. shows that considerable exercise has gone into and relevant considerations have been applied. The judgment of the Supreme Court in *Ritesh Shah* and the judgment of this Court in *Raghavendra-II* mainly influenced the issuance of the policy decision. Paragraph 5 contains two sub-paragraphs and sub-paragraph contains three parts. The petitioners' only challenge the last part namely filling up of the seat vacated by meritorious reserved candidate by a candidate of the same category. In our considered opinion, paragraph 5(i) and 5(ii) are inter-related and therefore the stand taken by the petitioners is inconsistent. On the one hand, the petitioners say that admitting a meritorious reserved candidate as a OC candidate and giving option to him to opt

for a better college is constitutionally permissible and on other hand they contend that the seat vacated by him should be given only to next OC merit candidate. If paragraph 5(i) is to have effective play, there should be a device as manifested in paragraph 5(ii), as otherwise, paragraph 5(i) cannot be fully given effect to. In Sabharwal's case, this was explained. In Ritesh Shah, it was further emphasised that no reservation programme as a protective discrimination device can be effective unless the disadvantage that may be suffered by a more meritorious reserved candidate is neutralized by appropriate action.

95. In a situation as is obtained in Andhra Pradesh where the region-wise reservations, institution-wise reservations as well as statutory reservations have to be adhered to, it is possible that in relation to one college a more meritorious candidate belonging to reserved category by reason of such merit may be placed at the bottom among the OC candidates, whereas a less meritorious candidate belonging to reserved category by reason of his rank among the reserved categories may be placed at the top of the reserved category merit list. In such event, giving option to more meritorious candidates is, in our considered opinion, a valid classification amongst the reserved candidates which satisfies the 'rationality test' as well as 'nexus test' for the purpose of Article 14 and 15 of the [Constitution of India](#). Such a procedure has a rational relation to the object it seeks to achieve, namely, to remove the disadvantage suffered by a more meritorious candidate by reason of the Presidential Order as well as statutory rules. The procedure adopted cannot be held to be arbitrary and unreasonable.

96. The language in paragraph 5 (ii) is so clear that third part thereof can be operated only when 'rules of reservation are applicable' to a college/course to which the more meritorious candidate opts. In Andhra Pradesh, the reservation for Scheduled Castes is provided category-wise (SC-A, SC-B, SC-C and SC-D) as per provisions of Andhra Pradesh Scheduled Castes (Rationalisation of Reservation) Act, 2000. The reservations for Backward Classes is governed by executive orders issued in G.O.Ms.No. 1793, Education Department dated 23-9-1990, which provides for 25% reservation for BC candidates and such reservation is provided at 7%, 10% 1% and 7% to various groups of Backward Classes such as Group A, Group B, Group C and Group D respectively. In view of this, we

cannot say, there is arbitrariness as alleged by the petitioners. For instance, if a candidate, say belongs to SC-A who got a seat merit quota by virtue of his rank, wants to opt and slide to a college/course of his choice, there must be a seat in the other college which was occupied by a candidate belonging to SC-A candidate whose merit is less than the meritorious candidate. Only in such an event, the option is given. As the candidate opting goes and gets admission in the seat which in usual course would have gone to a candidate of the same reservation category, para 5(ii) provides that the vacated seat shall be filled with the same reservation category candidate, (t is equitable principle which indeed also satisfies paragraph 10 of Presidential Order read with Annexure-III (and illustrations given thereunder) to G.O.P No.646, dated 10-7-1979. We have already referred to G.O.P No.646, dated 10-7-1979 which says that if in the provisional admission list, the last candidate happens to be a reservation candidate even belonging to non-local area, he shall not be deleted from the list and the last ranking non-local OC candidate alone will be deleted from the provisional list.

97. Furthermore, as rightly contended by the learned Advocate-General, in a matter like this, vague allegations cannot be cause for constitutional adjudication. Even before the petitioners knew the results of the counselling they filed these writ petitions. No material is placed before us and there is no evidence to show that they have been subjected to hostile discrimination. In the absence of specific grievance with referenceto specific facts, it is not possible to hold that the impugned paragraph 5(ii) suffers from the vice of unreasonableness or arbitrariness.

CONCLUSION

98. In Indra Sawhney, Sabarwal, Ritesh Shah, Rajiv Mittal and Preeti Mittal cases the Supreme Court considered the principle and categorically laid down that resultant vacant seat by the operation of sliding rule must necessarily go a candidate belonging to reserved category. The law is binding on all the Courts including on this Court. In such a situation, the endeavour of the High Court should be to guide its adjudicative process in tune with the law laid down by the Supreme Court. It would be impropriety to ignore the settled constitutional principles and pass orders which would be contrary to the decisions of the Supreme Court. We

may refer to a latest judgment of the Supreme Court in Dwarikesh Sugar Industries Limited v. Prem Heavy Engineering Works (P) Limited, : AIR 1997 SC2477 . In the said case, the Supreme Court considered the legality and validity of the judgment of Allahabad High Court restraining the respondents therein from invoking Bank guarantee in question. The submission was that having regard to the decisions rendered by the Supreme Court in large number of cases, such an order could not have been passed. Accepting the same, the High Court judgment was found faulted for ignoring the decisions of the Supreme Court is. The relevant observations are as follows.

It is unfortunate, that notwithstanding the authoritative pronouncements of this Court, the High Courts and the Courts subordinate thereto, still seem intent on affording to this Court innumerable opportunities for dealing with this area of law, thought by this Court to be well settled.,... When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Court to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.

99. In the result, we accordingly hold that paragraph 5(ii) of G.O. Ms. No.550, Higher Education (EC.II) Department, dated 30-10-2000 is constitutionally valid in accordance with the principles laid down by the Supreme Court in Ritesh Shah v. Y.L. Yamul and that it does not violate Articles 14 and 15 of the [Constitution of India](#).

100. The writ petitions are devoid of merits and the same are accordingly dismissed without any order as to costs.

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