

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.32414 of 2014

Between:  
Bichenapally Sumahitha

....Petitioner

and

The Government of Telangana,  
Department of Health, Medical and  
Family Welfare (C1) Department,  
Secretariat, Hyderabad,  
And others.

....Respondents

**JUDGMENT PRONOUNCED ON : 23.09.2015**

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**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

1. Whether Reporters of Local newspapers : **Yes**  
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : **Yes**  
Marked to Law Reporters/Journals?
3. Whether His Lordship wishes to : **Yes**  
see the fair copy of the Judgment?

**\* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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....Respondents

Counsel for petitioner: Learned Senior Counsel Sri A.Sudharshan  
Reddy

Counsel for Respondent Nos.1 and 2 : GP for Medical & Health

Counsel for Respondent No.3 : Sri A.Prabhakar Rao

Counsel for Respondent No.4 : Sri E.Ajay Reddy

Counsel for Respondent No.5 : Sri V.Srinivas Rao  
Standing Counsel for Medical Counsel of India

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> Head Note:

? CITATIONS:

1. AIR 1971 SC 2303
2. AIR 1981 SC 487
3. (1981) 4 SCC 159
4. (1993) 3 SCC 663
5. (2005) 2 SCC 65
6. (2012) 7 SCC 389
7. (2014) 5 SCC 774
8. (2003) 2 SCC 132
9. (2012) 10 SCC 149

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**WRIT PETITION No.32414 of 2014**

**ORDER:**

The writ petitioner is a student who wanted to pursue MBBS Course. She secured 97.66% of marks in the relevant subjects and attended for EAMCET-2014 examination. She secured 4178<sup>th</sup> rank. Since the chances of securing admission through counseling were little, she wanted to apply for admission under C1 category. The admissions to MBBS are governed by the rules framed under G.O.Ms.No.9, Health, Medical and Family Welfare (C1) Department, dated 25.08.2014, as per which, 60% of the seats are filled under convener quota whereas 40% of the seats are filled under category C. In respect of C category seats, 25% are earmarked for management quota under C1, and 15% are earmarked for NRI quota. The fee payable for management quota is different from NRI quota.

The fourth respondent college issued a notification on 27.08.2014 inviting applications for filling up of the seats under management quota. The petitioner applied on 29.08.2014. The fourth respondent directed the petitioner to attend for an interview and also directed her to furnish a bank guarantee with relevant documents. The petitioner appeared for the interview and submitted all the relevant documents on 30.08.2014 along with a Demand Draft for Rs.9,00,000/- for the first year fees drawn on State Bank of Hyderabad, dated 30.08.2014. The petitioner also submitted a bank guarantee bearing No.01/2014-15 for an amount of Rs.36,00,000/- from the State Bank of Hyderabad, Saroornagar Branch, valid till 31.03.2019. The fourth respondent College had collected all the originals, demand drafts, bank guarantee etc., on 30.08.2014 itself. Later on, the originals were returned and only photocopies were retained by them. At that stage, the petitioner filed W.P.No.25636 of 2014 challenging the action of the fourth respondent in returning the originals and this Court, by order

dated 03.09.2014, directed the fourth respondent to receive the bank guarantee and demand draft and consider the case of the petitioner for admission into MBBS course for the academic year 2014-2015 based on her ranking under C1 category. Though the fourth respondent was under obligation to display the merit list of the candidates on the notice board, the same was not displayed. The fourth respondent filed a petition in W.P.No.25636 of 2014 seeking vacation of the direction and enclosed the merit list. The petitioner was surprised to know that she was placed at serial No.38 by awarding 1 mark in the interview as against 15 marks earmarked for the interview upsetting her chances of securing admission in the course. Though the petitioner secured 586 marks in the group subjects and she was second highest candidate in the merit list, by awarding only 1 mark in the interview, the petitioner was denied admission. The candidates, who secured lesser marks of 497, got admission by awarding marks arbitrarily at the time of interview. Challenging denial of her admission, the present Writ Petition is filed.

A counter affidavit is filed on behalf of the third respondent stating that the admissions to MBBS course in private unaided non-minority medical colleges are governed by the rules issued by the Government of Andhra Pradesh vide G.O.Ms.No.136, Health, Medical and Family Welfare (E.1) Department, dated 30.04.2007, as amended from time to time. It was amended by G.O.Ms.No.97, dated 06.07.2013 and further amended by G.O.Ms.No.9, dated 25.08.2014. It is admitted that the petitioner appeared for the EAMCET examination and secured the rank of 4178. As per the amendment made in G.O.Ms.No.9, dated 25.08.2014, the private medical college is authorized to conduct the interview by constituting a Selection Committee consisting of a) Chairman i.e., the Dean/Principal/Director of the College; b) one Senior Faculty Member; and c) one Member from the Management Committee of the College, for selection of the candidates for admission into first year MBBS course under C1 category. The object of conducting interview is to assess the intent and aptitude towards the course and prevent multiple blocking of the seats in more than one college. The merit list should be displayed in the notice board of the College and will be sent to the University for approval. Accordingly, after interview, the merit list was sent to the third respondent and the third respondent approved the same.

The fourth respondent filed a separate counter stating that the entire process of admission to MBBS course is regulated and governed as per the rules called, "The Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical & Dental Professional Courses) Rules, 2007". In respect of the academic year 2014-2015, the fourth respondent issued a notification dated 27.08.2014 in two leading Newspapers i.e., "The Hans India" English Daily and "Prajasaki" Telugu Daily inviting the interested candidates to approach the

College office for collecting the application forms for admission to Category-C1 management quota seats of the first year MBBS course. In response to the same, 52 candidates applied and they submitted the applications along with the enclosures within the prescribed time. The interviews were held on 30.08.2014 and only 41 candidates attended the interview. Based on the performance at the interview and marks in the qualifying examination, the merit list was prepared and the same was displayed on the notice board on 31.08.2014 and was also sent to the third respondent. The third respondent approved the merit list by communication dated 01.09.2014, which contained the names of 52 candidates in the order of merit. Accordingly, the fourth respondent granted admission to the candidates at serial numbers 1 to 37 from the approved merit list. They paid the college fees, University fees and are attending the classes with effect from 01.09.2014. In view of the compliance with the rules, there are no merits in the Writ Petition and accordingly, sought for dismissal of the Writ Petition.

A reply affidavit is filed stating that the 15% of the marks allocated for the interview was only to assess the intent and aptitude towards the course and prevent multiple blocking of the seats in more than one college. Thus, the interview process is limited. Since the petitioner applied only to the fourth respondent College, there cannot be any allegation of multiple blocking of seats and there was no allegation against the petitioner that the petitioner lacked intent and aptitude. The reply affidavit further states that the petitioner who is a meritorious student, who in the normal course would have stood at second in the list, was denied the seat.

In view of the above pleadings, the only point that arises for consideration in the present Writ Petition is whether the denial of the seat by the fourth respondent by awarding only one (1) mark in the interview is valid or not and if so, whether the petitioner is entitled for a seat in the fourth respondent College.

Learned Senior Counsel, Sri A.Sudharshan Reddy, appearing for the petitioner submitted that in view of the authoritative pronouncements of the Supreme Court, the petitioner is entitled for a seat, as the award of marks by the interviewing committee is arbitrary. He relied on **Minor A.Periakaruppan v. State of Tamil Nadu**<sup>[1]</sup>, **Ajay Hasia v. Khalid Mujib Sehravardi**<sup>[2]</sup>, **Lila Dhar v. State of Rajasthan**<sup>[3]</sup>, **D.V.Bakshi v. Union of India**<sup>[4]</sup>, **Mridul Dhar (Minor) v. Union of India**<sup>[5]</sup>, **Asha v. Pt.B.D.Sharma University of Health Sciences**<sup>[6]</sup> and **Bishnu Biswas v. Union of India**<sup>[7]</sup>.

Learned Standing Counsel appearing for the fourth respondent College submitted that the interviewing committee had followed the procedure, awarded the marks and the action of the fourth respondent cannot be held to be bad.

Learned Standing Counsel appearing for the University submitted that, as on today, the merit list of the unaided private Medical Colleges in respect of C category of seats for the academic year 2015-16 is not approved. He further submitted that the Government of Telangana issued G.O.Ms.No.39, Health Medical and Family Welfare (C1) Department dated 20-5-2015 doing away the interview process in respect of C category seats and restricting them to 15% of the total seats and earmarking them for NRI quota. The management seats are filled under category B through a test conducted by the Telangana Private Medical & Dental Colleges Management Association (TPMDCMA).

The Government of Andhra Pradesh issued the rules called, “the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical & Dental Professional Courses) Rules, 2007”, in exercise of the powers conferred under the provisions of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. The said rules were amended by G.O.Ms.No.9, dated 25.08.2014, and the admission to category C is regulated under the said Government Order. The total seats in a private medical college are categorized in three categories:

- i) 50% of the intake of the college is called as Competent Authority seats i.e., A category seats
- ii) 10% of intake of the college is called as B category seats and
- iii) 40% of the intake of the college is called as Management Seats, which are further divided as C1 category representing 25% of intake and C2 category representing 15% of intake called as NRI quota seats.

In respect of C1 category seats, G.O.Ms.No.9, dated 25.08.2014, prescribes the procedure as follows:

**“PROCEDURE FOR GRANT OF ADMISSIONS INTO UG (MEDICAL AND DENTAL COLLEGES UNDER THE MANAGEMENT QUOTA SEATS)**

- i. The individual college shall issue notification in two newspapers calling for application for admission into management quota seats in UG Medical and Dental Courses. The application forms will be issued to the prospective candidates on payment.
- ii. The college office shall invariably issue applications to all the candidates who request for applications.
- iii. The filled in applications along with necessary certificates shall be submitted by the candidates to the college office within the

prescribed time fixed by the college office.

- iv. The college shall invariably issue a receipt of the application received.
- v. The college shall scrutinize all the applications received in respect of the eligibility in Biology, Physics and Chemistry subjects in 10+2 course.
- vi. The college shall constitute a selection committee. The Committee conducting interview shall comprise of the following:-
  - 1. Chairman: Dean/Principal/Director of the College.
  - 2. One senior faculty member.
  - 3. One member from management committee of the college.
- vii. The college shall prepare a final merit list of all the candidates on the basis of individual's performance at qualifying examination which shall carry 85% weightage **and marks obtained by the candidate in the interview which shall carry 15% weightage to assess the intent and aptitude towards the course and prevent multiple blocking of the seats in more than one college.** The same shall be tabulated and displayed on the notice board of the college, and be sent to the Dr.NTRUHS for approval. (emphasis supplied)
- viii. Dr.NTR University of Health Sciences shall verify the merit list and accord approval.
- ix. The merit list approved by the Dr.NTRUHS containing the names of the applicants and the marks obtained by them shall be prominently displayed on the notice board of their respective college.
- x. The college shall admit the candidates strictly in order of merit shown in the approved merit list."

The college submitted a list of 52 candidates including 11 candidates who have not attended the interview and for the purpose of the present case the list of 41 candidates is sufficient. The merit list reads as follows:

MERIT LIST

| Name of the candidate       | Max.Marks of Sciences in intermediate (10+2) or its equivalent examination | Total Sciences marks obtained in Intermediate (10+2) or its equivalent examination | 85% of the Marks of Biology, Physics & Chemistry subjects with practicals in intermediate or (10+2) or its equivalent examination | Marks in interview | Total Marks of 85% of intermediate science Marks + interview Marks | Merit Order |
|-----------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------|-------------|
| OTHEDAR PRAVALIKA           | 600                                                                        | 595                                                                                | 84.29                                                                                                                             | 14                 | 98.29                                                              | 1           |
| I SREE VIGNA                | 600                                                                        | 585                                                                                | 82.88                                                                                                                             | 14                 | 96.88                                                              | 2           |
| HURAKA PRATHISHA            | 600                                                                        | 576                                                                                | 81.60                                                                                                                             | 14                 | 95.60                                                              | 3           |
| KTA BHARADIA                | 600                                                                        | 565                                                                                | 80.04                                                                                                                             | 14                 | 94.04                                                              | 4           |
| TARUN REDDY                 | 600                                                                        | 564                                                                                | 79.90                                                                                                                             | 10                 | 89.90                                                              | 5           |
| SAHASRA                     | 600                                                                        | 552                                                                                | 78.20                                                                                                                             | 11                 | 89.20                                                              | 6           |
| NDLUR ABHIRAM               | 600                                                                        | 557                                                                                | 78.91                                                                                                                             | 10                 | 88.91                                                              | 7           |
| HARLA HARISH                | 600                                                                        | 549                                                                                | 77.78                                                                                                                             | 11                 | 88.78                                                              | 8           |
| ACHANA VOOTUKURU            | 600                                                                        | 548                                                                                | 77.63                                                                                                                             | 11                 | 88.63                                                              | 9           |
| OSARAJU REVATI              | 600                                                                        | 525                                                                                | 74.38                                                                                                                             | 14                 | 88.38                                                              | 10          |
| B VINISHA                   | 600                                                                        | 539                                                                                | 76.36                                                                                                                             | 12                 | 88.36                                                              | 11          |
| EDANTAM DEEPANJALI          | 600                                                                        | 546                                                                                | 77.35                                                                                                                             | 11                 | 88.35                                                              | 12          |
| B J L HARSHINI              | 600                                                                        | 545                                                                                | 77.21                                                                                                                             | 11                 | 88.21                                                              | 13          |
| HIRUKKOVALUR NIKHIL AISHNAV | 600                                                                        | 552                                                                                | 78.20                                                                                                                             | 10                 | 88.20                                                              | 14          |

|                                            |            |            |              |                            |              |           |
|--------------------------------------------|------------|------------|--------------|----------------------------|--------------|-----------|
| ITLAM SPOORTHY                             | 600        | 544        | 77.07        | 11                         | 88.07        | 15        |
| ONGU S RAMA CHARAN                         | 600        | 522        | 73.95        | 14                         | 87.95        | 16        |
| PPALAPALLI MAHESH BABU                     | 600        | 529        | 74.94        | 13                         | 87.94        | 17        |
| HAMSITA KATTEKOLA                          | 600        | 543        | 76.93        | 11                         | 87.93        | 18        |
| NKIREDDYPALLE<br>HANMUKHA SHASHANK<br>EDDY | 600        | 528        | 74.80        | 13                         | 87.80        | 19        |
| LE PRIYA                                   | 600        | 549        | 77.78        | 10                         | 87.78        | 20        |
| MARAVADI SREEDEEP                          | 600        | 533        | 75.51        | 12                         | 87.51        | 21        |
| NIGDHA MOKKAPATI                           | 600        | 532        | 75.37        | 12                         | 87.37        | 22        |
| RAHASITH SAI REDDY<br>ALLARI               | 600        | 532        | 75.37        | 12                         | 87.37        | 23        |
| OGINENI JAHNAVI                            | 600        | 544        | 77.07        | 10                         | 87.07        | 24        |
| UKKARAJU SUBRAHMANYA<br>AKETH REDDY        | 600        | 585        | 82.88        | 4                          | 86.88        | 25        |
| KASHYAP                                    | 600        | 570        | 80.75        | 6                          | 86.75        | 26        |
| AIDI SAI KRISHNA REDDY                     | 600        | 554        | 78.48        | 8                          | 86.48        | 27        |
| SWETHA                                     | 300        | 273        | 77.35        | 9                          | 86.35        | 28        |
| UGURU SURYA PRATIK                         | 600        | 531        | 75.23        | 11                         | 86.23        | 29        |
| UTHANDAM TANMAYEE                          | 600        | 537        | 76.08        | 10                         | 86.08        | 30        |
| AMA NAGENDRA PRASAD                        | 600        | 529        | 74.94        | 11                         | 85.94        | 31        |
| REETHIKA REDDY                             | 600        | 577        | 81.74        | 4                          | 85.74        | 32        |
| ATTARI HARIKA                              | 600        | 569        | 80.61        | 5                          | 85.61        | 33        |
| ADUSU SINDHUJA                             | 600        | 583        | 82.59        | 3                          | 85.59        | 34        |
| HADUVAI TULJA BHAVANI                      | 600        | 568        | 80.47        | 5                          | 85.47        | 35        |
| HILAKAMARRY HRUDHAY<br>EDDY                | 600        | 500        | 70.83        | 14                         | 84.83        | 36        |
| RNISH AGARWAL                              | 600        | 497        | 70.41        | 14                         | 84.41        | 37        |
| <b>ICHENAPALLY SUMAHITHA</b>               | <b>600</b> | <b>586</b> | <b>83.02</b> | <b>1</b>                   | <b>84.02</b> | <b>38</b> |
| .VARSHA                                    | 600        | 576        | 81.60        | 2                          | 83.60        | 39        |
| HANDRA TEJA.V                              | 600        | 566        | 80.18        | 3                          | 83.18        | 40        |
| RI MUHURTHA KATTEKOLA                      | 600        | 548        | 77.63        | 5                          | 82.63        | 41        |
| DEPALLI VAMSHI KRISHNA                     | 600        | 553        | 78.34        | Not attended the Interview |              |           |
| WARNA MADHURI REDDY<br>DUPALA              | 600        | 563        | 79.76        | Not attended the Interview |              |           |
| .SREEJA                                    | 600        | 580        | 82.17        | Not attended the Interview |              |           |
| EREDDY SREENIDHI                           | 600        | 573        | 81.18        | Not attended the Interview |              |           |
| .APURVAA                                   | 600        | 580        | 82.17        | Not attended the Interview |              |           |
| .MEDHA                                     | 600        | 566        | 80.18        | Not attended the Interview |              |           |
| AVID YASHWANTH KATHERA                     | 600        | 369        | 52.28        | Not attended the Interview |              |           |
| BHARGAVI PRIYA                             | 600        | 380        | 53.83        | Not attended the Interview |              |           |
| YEDA MARIA JUHI                            | 600        | 383        | 54.26        | Not attended the Interview |              |           |
| OTA RAVI TEJA                              | 600        | 418        | 59.22        | Not attended the Interview |              |           |
| IERGU PRANAYA REDDY                        | 600        | 443        | 62.76        | Not attended the Interview |              |           |

A perusal of the above table indicates that, though the petitioner secured 83.02% marks in the relevant subjects consisting of 85% of the marks of the total for the purpose of preparing the merit list, she was placed at serial number 38 by awarding only one mark in the interview for which 15 marks were allocated. She is the only candidate who was allotted one mark and other candidates were given three marks or above. If we take the marks as it is, one cannot find fault, but if one goes deep with regard to the application of the spirit of the rule in the light of the exercise of power by the committee, it becomes clear that the allocation of marks in favour of the petitioner was unjust. In order to come to this conclusion, one has to look into the rule and scope of exercise of power by the interviewing committee, though one cannot go into the mental process of the members of the interviewing committee. There is sufficient indication in the relevant rule for assessing the candidate at the time of interview and for awarding marks. The rule speaks of the role of the interviewing committee *to assess the intent and aptitude towards the course and prevent multiple blocking of the seats in more than one college*. It is the case of the petitioner that she applied only to the fourth respondent college and she attended the interview along with

the original documents and required bank guarantee. In those circumstances, it cannot be said that the petitioner had no intent to pursue the course. The aptitude of the petitioner can be gauged by the marks secured by the petitioner in the qualifying examination. Thus, if we see the parameters laid down in the rule and objectively consider the case of the petitioner, the petitioner would no less be entitled for less than ten marks in the interview in the normal circumstances. The discretion left with the interviewing committee is very less in view of the guidelines provided in the rule. When the rule is thus pitted against the award of marks in favour of the petitioner, any reasonable man would come to the conclusion that the award of 'one mark' to the petitioner is highly arbitrary. Any mark more than one would have made her eligible to get the seat. In view of this, I have no hesitation to hold that the fourth respondent denied the seat to the petitioner unjustly and the petitioner ought to have been admitted in C1 category claimed by her.

Coming to the relief that has to be granted in the facts and circumstances of the case, it is an admitted case that the admissions for the academic year 2014-2015 were completed and in fact, the students who were admitted in the said academic year completed one year of course. So far as the students in the academic year 2015-2016 are concerned, the learned Standing Counsel for the University fairly submitted that they have not approved any merit list in respect of C1 category candidates so far.

In **Minor A.Periakaruppan's** case (supra) the Supreme Court was considering the method of selection of the students to medical colleges in the State of Tamil Nadu. In the course of arguments, it was contended that no guidelines were prescribed for awarding marks at the interview and therefore the power conferred on the selection committee is an arbitrary power which is capable of being misused and in fact was misused. In the light of the said arguments, the Supreme Court considered the issue and held as follows:

"16. It was next urged that no objective criterion was fixed for interview. We are unable to accept this contention as well. The selectors were asked to interview candidates on the basis of the five criteria prescribed to which we have made reference earlier. Those tests are sufficiently objective in character. Similar tests were held to be objective by this Court in **Chitralekha v. State of Mysore** ((1964) 6 SCR 368 : AIR 1964 SC 1823) supra. It cannot be denied that extra curricular activities like sports, N.C.C., special services, general physical condition and endurance and general ability are objective tests. The aptitude referred to in the rule, in our opinion, is aptitude for medical profession.

17. It was next contended that separate marks had not been allotted for each one of the tests enumerated in the rule. A total of 75 interview marks were placed at the disposal of the selection committee and from out of those the committee could award marks according to its sweet will and pleasure. Such a power it was said is an arbitrary power. We were told that the entire 75 marks could have been given to a candidate even if he satisfied only one out of the five criterion prescribed. It is true that the rule did not prescribe separate marks for separate heads. But that in our opinion did not permit the selection

committee to allot marks as it pleased. Each one of the tests prescribed had its own importance. As observed at footnote 20 at p. 485 of American Jurisprudence Vol. 15 that the interviewers need not record precise questions and answers when oral tests are used to appraise personality traits; it is sufficient if the examiner's findings are recorded on the appraisal sheet according to the personal qualifications itemised for measure. A contention similar to those advanced by the petitioners came up for consideration before the Mysore High Court in **D.G. Viswanath v. Chief Secretary of Mysore** (AIR 1964 Mys 132). Therein the court observed thus :

“It is true that Annexure IV does not specifically mention the marks allotted for each head. But from that circumstance it cannot be held that the Government had conferred an unguided power on the Committees. In the absence of specific allocation of marks for each head, it must be presumed that the Government considered that each of the heads mentioned in Annexure IV as being equal in importance to any other. In other words, we have to infer that the intention of the Government was that each one of those heads should carry 1/5th of the "Interview" marks.”

18. We may note that the committee had not divided the interview marks under various heads nor were the marks given on itemised basis. The marks list produced before us shows that the marks were given in a lump. This is clearly illegal.

19. The interview held was also vitiated for the reason that the selection committee took into consideration irrelevant matters and at the same time failed to take into consideration matters required to be taken into consideration. In the counter-affidavit filed by the Chairman of the selection committee it was averred that in allotting interview marks the committee took into consideration qualities such as pleasant personality, quick thinking etc. One of the extra-curricular activities that the committee was required to take into consideration was N.C.C. training. That was clearly an objective test but from the counter-affidavit filed, it appears that the committee did not think that it was sufficient if an applicant had good record as a cadet, but according to it, he must also know why he joined the N.C.C. and what role N.C.C. plays in the (national life. These, in our opinion, are irrelevant considerations. Again the test like the physical condition and endurance can be best judged by a competent medical practitioner after a careful medical examination. It was in the very nature of things not possible for the selection committee though composed of eminent doctors to find out the physical condition and endurance by a mere look at the candidate. It is clear from the affidavit filed on behalf of the selection committees that at the time of interview much attention had not been given to the general ability which test include past performance of the applicants and the varied interest taken by them.

20. From the facts placed before us it is clear that the candidates were not interviewed in accordance with the rules governing the interview.”

The Constitution Bench of the Supreme Court in **Ajay Hasia's** case (supra) was considering the issue relating to the admissions in the Regional Engineering College, Srinagar, for the academic year 1979-1980. In the said case also the validity of the interview came up for consideration and it was exhaustively dealt with as follows:

“18. The second ground of challenge questioned the validity of viva voce examination as a permissible test for selection of candidates for admission to a college. The contention of the petitioners under this ground of challenge was that viva voce examination does not afford a proper criterion for assessment of the suitability of the candidates for admission and it is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors such as predilections and prejudices of the interviewers, his attitudes and approaches, his pre-conceived notions and idiosyncrasies and it is also capable of abuse because it leaves scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not

possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence violative of [Art. 14](#). Now this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity. We may quote the following passage from the book on "Public Administration in Theory and Practice" by M. P. Sharma which voices a far and balanced criticism of the oral interview method:

"The oral test of the interview has been much criticized on the ground of its subjectivity and uncertainty. Different interviews have their own notions of good personality. For some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificial and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit-or-miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole life time to judge a man's worth while interviewers have to do it in a quarter of an hour. Even at it's best, the common sort of interview reveals but the superficial aspects of the candidate's personality like appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc. go largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition."

Ol Glenn Stahl points out in his book on "Public Personnel Administration" that there are three disadvantages from which the oral test method suffers, namely, "(1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record on an oral test; and (3) public suspicion of the oral test as a channel for the exertion of political influence" and we may add, other corrupt, nepotistic or extraneous considerations. The learned author then proceeds to add in a highly perceptive and critical passage :

"The oral examination has failed in the past in direct proportion to the extent of its misuse. It is a delicate instrument and, in inexperienced hands, a dangerous one. The first condition of its successful use is the full recognition of its limitations. One of the most prolific sources of error in the oral has been the failure on the part of examiners to understand the nature of evidence and to discriminate between that which was relevant, material and reliable and that which was not. It also must be remembered that the best oral interview provides opportunity for analysis of only a very small part of a person's total behaviour. Generalizations from a single interview regarding an individual's total personality pattern have been proved repeatedly to be wrong."

But, despite all this criticism, the oral interview method continues to be very much in vogue as a supplementary test for assessing the suitability of candidates wherever test of personal traits is considered essential. Its relevance as a test for determining suitability based on personal characteristics has been recognised in a number of decisions of this Court which are binding upon us. In the first case on the point which came before this Court, namely, **R. Chitra Lekha v. State of Mysore**, ((1964) 6 SCR 368 : (AIR 1964 SC 1823), this Court pointed out :

"In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric tests etc. Obviously we

are not in a position to judge which method is preferable or which test is the correct one. .... The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter."

and on this view refused to hold the oral interview test as irrelevant or arbitrary. It was also pointed out by this Court in A. Peeriakaruppan v. State of Tamil Nadu (1971) 2. SCR 430 : (AIR 1971 SC 2303):

"In most cases, the first impression need not necessarily be the past impression, but under the existing conditions, we are unable to accede to the contentions of the petitioners that the system of interview as in vogue in this country is so defective as to make it useless."

It is therefore not possible to accept the contentions of the petitioners that the oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

...

20. The petitioners, arguing under the last ground of challenge, urged that the oral interview as conducted in the present case was a mere pretence or farce, as it did not last for more than 2 or 3 minutes per candidate on an average and the questions which were asked were formal questions relating to parentage and residence of the candidate and hardly any question was asked which had relevance to assessment of the suitability of the candidate with reference to any of the four factors required to be considered by the Committee. When the time spent on each candidate was not more 2 or 3 minutes on an average, contended the petitioners, how could the suitability of the candidate be assessed on a consideration of the relevant factors by holding such an interview and how could the Committee possibly judge the merit of the candidate with reference to these factors when no questions bearing on these factors were asked to the candidate. Now there can be no doubt that if the interview did not take more than 2 or 3 minutes on an average and the questions asked had no bearing on the factors required to be taken into account, the oral interview test would be vitiated, because it would be impossible in such an interview to assess the merit of a candidate with reference to these factors. This allegation of the petitioners has been denied in the affidavit in reply filed by H. L. Chowdhury on behalf of the college and it has been stated that each candidate was interviewed for 6 to 8 minutes and "only the relevant questions on the aforesaid subjects were asked". If this statement of H. L. Chowdhury is correct, we cannot find much fault with the oral interview test held by the Committee. But we do not think we can act on this statement made by H. L. Chowdhury, because there is nothing to show that he was present at the interviews and none of the three Committee members has come forward to make an affidavit denying the allegation of the petitioners and stating that each candidate was interviewed for 6 to 8 minutes and only relevant questions were asked. We must therefore, proceed on the basis that the interview of each candidate did not last for more than 2 or 3 minutes on an average and hardly any questions were asked having bearing on the relevant factors. If that be so, the oral interview test must be held to be

vitiated and the selection made on the basis of such test must be held to be arbitrary. We are, however, not inclined for reasons already given, to set aside the selection made for the academic year 1979-80, though we may caution the State Government and the Society that for the future academic years, selections may be made on the basis of observation made by us in this judgment lest they might run the risk of being struck down. We may point out that, in our opinion, if the marks allocated for the oral interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness. We think that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee.”

In **Bishnu Biswas's** case (supra), the Supreme Court observed that there is distinction while considering the case of employment and of admission for an academic course and held as follows:

“16. The appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post and no straight-jacket formula can be laid down. Further there is a distinction while considering the case of employment and of admission for an academic course. The courts have repeatedly emphasized that for the purpose of admission in an education institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post.

17. In **Mehmood Alam Tariq. v. State of Rajasthan** (AIR 1988 SC 1451), this Court had upheld fixation of 33% marks as minimum qualifying marks for viva test. In **State of U.P. v. Rafiquddin** (AIR 1988 SC 162), this Court upheld the fixation of 35% marks as minimum qualifying marks in the viva test for selection for the recruitment to the post of a judicial magistrate. In **Anzar Ahmad v. State of Bihar** (AIR 1994 SC 141), allocation of 50% marks for viva test and 50% marks for academic performance was upheld by this Court while considering the appointment of Unani Medical Officer observing that court must examine as to whether allocation of such higher percentage may tend to arbitrariness.

18. In **Jasvinder Singh v. State of J&K** (2003) 2 SCC 132, this Court upheld the allocation of 20% marks for viva test as against 80% marks for written test for selection to the post of Sub- Inspector of Police. However, the Court cautioned observing that the awarding of higher percentage of marks to those who got lower marks in written test in comparison to some who had got higher marks in written examination, an adverse inference from certain number of such instances can be drawn. However, in absence of any allegation of mala fides against the Selection Committee or any Member thereof, a negligible few such instances, would not justify the inference that there was a conscious effort to bring some candidates within the selection zone.”

The interview method for selection to public services came up for consideration before the Supreme Court in **Lila Dhar's** case (supra). The Supreme Court, after following the above cases, held that the written examination assesses the man's intellect and the interview tests the man himself and “the twain shall meet” for a proper selection. The Court observed that there cannot be any rule of thumb regarding the precise weight to be given to the interview and further held that it is for the interviewing

body to take a general decision whether to allocate marks under different heads or award marks in a single lot. It cautioned that there cannot be any magic formulae in these matters and Courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless it is proven or obvious that the method of marking was chosen with oblique motive. Finally it was held that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public services. Thus, it made a distinction between **Minor A.Periakaruppan's** case (supra) and **Ajay Hasia's** case (supra) and the case before the Supreme Court, which related to appointment to Rajasthan Judicial Service.

In **Asha's** case (supra), it was stated that on the facts of that case, it cannot be tested on the touchstone of stringent principles of burden of proof applicable to criminal jurisprudence. It was the obligation of the respondents to specifically deny the averments made by the appellant and to produce the relevant records to show that the stand taken by them is worthy of credence. It was also held that it was unnecessary for the appellant to plead and prove mala fides, misconduct or favouritism and nepotism on the part of the parties concerned. The method of merit was stressed by observing as follows:

“21. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. (Ref. **Priya Gupta v. State of Chhatisgarh** ((2012) 7 SCC 433), **Harshali v. State of Maharashtra** ((2005) 13 SCC 464), **Pradeep Jain v. UOI** ((1984) 3 SCC 654), **Sharwan Kumar v. Director of Health Services** (1993 Supp (1) SCC 632), **Preeti Srivastava v. State of MP** ((1999) 7 SCC 120), **Guru Nanak Dev University v. Saumil Garg** ((2005) 13 SCC 749), **AIIMS Students' Union v. AIIMS** ((2002) 1 SCC 428).”

In the said case the Supreme Court directed the respondents to grant admission to the appellant to the MBBS course in that current academic year subject to the condition that she will pursue her MBBS course right from its beginning.

Learned Counsel appearing for the fourth respondent college relied on **Jasvinder Singh v. State of J&K**<sup>[8]</sup> and submitted that in the absence of any mala fides on the interviewing committee, the award of marks in favour of the petitioner cannot be found fault. He relied on the following observations of the Supreme Court:

“8. The learned Single Judge also seem to have been very much carried away by few instances noticed by him as to the award of higher

percentage of marks in viva voce to those who got lower marks in written test as compared to some who scored higher marks in written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in written test will or should be presumed to have fared well in viva voce test also and the Expert opinion as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart the variation of written test marks of those who were found to have been awarded higher marks in viva voce viz-a-viz those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or any one in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates all those who have obtained 56 marks in written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such (SIC) in law to call for our interference.”

But, the Supreme Court in **Mridul Dhar (Minor)**'s case (supra) examined the issue relating to admissions in medical colleges and issued several directions in para 35, including the direction as follows:

“1 to 12 .....

13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

14 to 16.....”

Learned Counsel for the respondent College also relied on **Faiza Choudhary v. State of Jammu and Kashmir**<sup>[9]</sup>, wherein it was held that there cannot be any direction for carrying forward the seat for the next year. He relied on the following observations:

“14. A medical seat has life only in the year it falls that too only till the cut-off date fixed by this Court i.e. 30th September in the respective year. Carry forward principle is unknown to the professional courses like medical, engineering, dental etc. No rule or regulation has been brought to our knowledge conferring power on the Board to carry forward a vacant seat to a succeeding year. If the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years.”

But, this case is one of the rarest of rare cases as held in **Asha's** case (supra) and it is clear from the record that the petitioner was unjustly denied of her right to seat.

In view of the above authoritative pronouncements of the Supreme Court and also on the facts of the case, the petitioner's case deserves to be allowed.

The Writ Petition is, accordingly, allowed. The fourth respondent College is directed to include the name of the petitioner in the C1 category and send her name to the third respondent University along with other candidates in the C1 category for admission to MBBS course during the academic year 2015-2016 and the third respondent shall consider the name and approve her admission under 'B' category now. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

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**(A.RAMALINGESWARA RAO, J)**

23.09.2015  
Vs

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- [\[1\]](#) AIR 1971 SC 2303
  - [\[2\]](#) AIR 1981 SC 487
  - [\[3\]](#) (1981) 4 SCC 159
  - [\[4\]](#) (1993) 3 SCC 663
  - [\[5\]](#) (2005) 2 SCC 65
  - [\[6\]](#) (2012) 7 SCC 389
  - [\[7\]](#) (2014) 5 SCC 774
  - [\[8\]](#) (2003) 2 SCC 132
  - [\[9\]](#) (2012) 10 SCC 149