A ANIL KUMAR GUPTA, ETC.

v.

STATE OF UTTAR PRADESH AND ORS.

JULY 28, 1995

B [B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Constitution of India, 1950 : Article 15.

Reservation for—Candidates belonging to hill and Uttranchal C *areas—Relatable to Article 15(4) and not to Article 15(1)—In addition to 27 percent for Other Backward Classes—Held:clearly illegal. Higher Education: Admission to professional courses.*

Medical Courses—Reservation of seats—Horizontal reservations—Overall or compartmentalised—Distinction explained—Guidelines for future selec- D *tion process—Laid down*

The respondent Lucknow University had issued a notification calling for applications for admission to medial courses in the State in accordance with notification of May 17, 1994. The University subsequently issued a E **corrigendum stating that the extent of reservation in favour of five categories viz. (1) actual dependents of freedom fighters—5% (2) sons/daughters of soldiers/deceased/disabled in war - 2% (3) Physically handicapped - 2% (4) candidates of hills areas - 3%. and (5) candidates of Uttrakhand area - 3% (referred to as "Special categories") shall be horizontal reservations and not vertical reservations. Vertical reservations for** F **Scheduled Castes Candidates—21%, Scheduled Tribe Candidates - 2% and other Backward Class Candidates - 27% have also been provided.**

The respondent Lucknow University issued a corrigendum calling upon the candidates applying under these special categories to specify to G **which social reservation category do they belong. They were asked to specify whether they belonged to Scheduled Tribes, Scheduled Castes, Other Backward Classes or to open competition category, as the case may be. Out of the 2130 candidates who had applied against the five special reservation categories, only nine stated that they belong to Other Backward Classes. None stated that they belong to Scheduled Tribes or** H **Scheduled Castes which meant that, but for nine candidates, all the rest**

applying under the aforesaid special categories were from the general/non-reserved category. 110 out of 112 special reservation candidates have been accommodated only in O.C. category and none in the O.B.C., S.C. or S.T. category.

Aggrieved by the above method of filling of seats the petitioners preferred the present writ petitions.

On behalf of the petitioners it was contended that 110 seats were taken away from the open competition category (O.C.), that the special reservation seats are to be distributed proportionately among the vertical reservation categories, and that only fifty four special category candidates ought to have been accommodated with open competition and not 110.

On behalf of the respondents it was contended that 110 candidates belonging to special categories were first adjusted against O.C. category; that 263 seats were filled by General candidates; and that reservation in favour of special category is overall and not compartmentalised.

Disposing of the writ petitions and laying down guidelines for future selections, this Court.

HELD : 1.1. At the outset a glaring illegality may be mentioned which has not been raised in these writ petitions. Three percent of the seats have been reserved for candidates belonging to hill and Uttranchal areas which are treated as horizontal reservations. The reservation of fifteen percent of seats for special categories was on very high side. Two categories out of them representing six percent out of fifteen percent are really reservations under Article 15(4), wrongly treated as reservations under Article 15(1). Even otherwise, the special reservation would be nine percent. [407-E, 414-G]

1.2. A separate horizontal reservation of six per cent of the seats in favour of candidates from hill and Uttaranchal areas in addition to twenty seven percent reservation in favour of O.B.C. is clearly illegal. [407-H]

State of Uttar Pradesh v. *Pradeep Tandon,* [1975] 1 S.C.C. 267 and *Indra Sawhney and Ors.* v. *Union of India & Ors.,* [1992] Suppl. 3 S.C.C. 217, relied on.

2. In view of the ambiguous language employed in the corrigendum

A issued by the respondent Lucknow University. It is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalised reservations. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. [411-E]

B

3. In this very case, out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the special reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs.; if the 1/2 special reservation seats C are also divided proportionately as between O.C., O.B.C., S.C. and S.T.,30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. D category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). As E against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be 56+20=76. Further, if F no special reservation candidate belonging to SC and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of G course, obvious that the inter se quota between O.C., O.B.C., S.C. and S.T. will not be altered. [411-F-H, 412-A-D]

4. The revised notification says that "horizontal reservation be granted in all medical colleges on total seats of all the courses..." These H words are being interpreted in two different ways by the parties; one says

it is over-all reservation while other says it is compartmentalised. Paragraph 2 says that the candidates selected under the aforesaid special categories "would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other backward Classes/General to which they belong. For example, if a candidate dependent on a freedom fighter selected on the basis of reservation belongs to Schedule Castes, he will be adjusted against the seat reserved for Scheduled Castes". This is sought to be read by the petitioners as affirming that it is a case of compartmentalised reservation. May be or may not be. It appears that while issuing the said notification, the Government was not conscious of the distinction between overall horizontal reservation and compartmentalised horizontal reservation. [412-E-G]

5. It was wrong to direct the fifteen percent special reservation seats to be filled first and then take up the O.C. (merit) quota (followed by filling of O.B.C., S.C. and S.T. quotas). Since the revised notification issued by the respondent provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been adjusted almost exclusively against the O.C. quota. [413-F, 414-C]

6. The issue of corrigendum by the respondents was delayed exercise which ought to have been undertaken at the beginning itself. Even the manner in which the seats have been filled up is faulty. The injustice done to the open competition candidates has to be rectified to the extent feasible. [415-C]

7. In the matter of admissions made pursuant to C.P.M.T. 1994, while admissions already finalised shall not be disturbed, the Uttar Pradesh Government shall create thirty four additional seats in the M.B.B.S. course and admit thirty four students from the O.C. category against these seats. If any seats are vacant they shall also be filled from the O.C. category alone. This creation of additional seats is restricted to current admissions only and shall not be a permanent feature. [415-D-G]

8. It is not possible to accommodate 54 students belonging to the O.C. category as the factual basis for this is debatable in view of the ambiguous language of the corrigendum.

9. The following guidelines are laid down for the future selection process :

A **(i) While providing horizontal reservations, the respondents should specify whether the horizontal reservation is a compartmental one or an overall one. In the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised. [412-H, 413-A, D]**

B **(ii) The notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz; S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one of the other vertical reservation category suffering**
C **prejudice. [413-D]**

(iii) The proper and correct course is to fill up the O.C. quota (50%), on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T., and O.B.C., the third step would be to find out how many candidates belonging to special reservations have been selected on the
D **above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the cor-**
E **responding number of candidates therefrom. [413-G-H, 414-A]**

(iv) If it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories,
F **overall, may be satisfied or may not be satisfied. [414-B]**

(v) The special reservations (horizontal reservations) should be kept to the minimum. [414-G]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 276 of
G 1995.

WITH

Writ Petition (C) No. 326 of 1995.

H (Under Article 32 of the Constitution of India.)

S.C. Gupta and Sunil K. Jain for the Petitioners. A

P.K. Jain for the Petitioner in W.P. (C) No. 326/95.

Pradeep Misra and Irshad Ahmad, for the Respondents.

The Judgment of the Court was delivered by B

B.P. JEEVAN REDDY, J. These writ petitions highlight the faulty manner in which reservations have been provided and implemented by the Government of Uttar Pradesh and its authorities in the matter of admission to medical courses for the year 1994-95. Though the dispute pertains to the academic year 1994-95, we are told that the admissions have been made C only in June-July, 1995 and are yet to be finalised in respect of certain courses.

The story begins with the announcement of policy of reservation in the matter of admission to medical courses issued by the Government on May 17, 1994. According to this notification, sixty five percent of seats were D reserved in favour of various classes/categories leaving only thirty five percent for open competition (O.C.) category. The reservations provided were to the following effect:

"1.	Backward Class	27%
2.	Hill Region	3%
3.	Uttarakhand Region	3%
4.	Scheduled Caste	21%
5.	Scheduled Tribe	2%
6.	Real dependents of freedom fighters	5%
7.	Son/Daughter of soldier died in war/ handicapped soldiers	2%
8.	For Handicapped candidates	2%
		65%

E F G

A further reservation in favour of women was also provided to the extent of thirty percent in each of the above categories. The reservations so H

A provided were challenged by way of a writ petition in this Court under Article 32 of the Constitution - Civil Writ Petition No. 777 of 1994 (*Swati Gupta* v. *State of Uttar Pradesh & Ors.)*. The contention of the petitioner was that reservation of sixty five percent of seats was contrary to the decision of this Court in *Indra Sawhney and Ors.* v. *Union of India and Ors.* [1992] Suppl. 3 S.C.C. 217 and, therefore, void. Pending the said writ B petition, the Government issued a notification on December 17, 1994 modifying the reservation policy contained in the notification of May 17, 1994. It would be appropriate to set out the notification dated December 17, 1994 in its entirety:

C "No.6550/Sec-14/V-III.93

From:
Ravindra Kumar Sharma
Sachiv,
Uttar Pradesh Shasan

D

To : Director General,
Medical Education, Training,
U.P. Lucknow.

Medical Section - 14 Lucknow dated 17.12.94

E

Sub: Reservation in seats of M.B.B.S./B.D.S./B.H.M.S./B.A.M.S./ B.U.M.S. Courses to be filled through C.P.M.T. in State Allopathic Medical Colleges/K.G. Medical College, Lucknow/All State Homeopathic/Ayurvedic/Unani Medical Colleges.

F

Sir,

In continuation of G.O. No. 2697/Sec/-14/V-94/111/93 dated 17.5.94, on the above subject, I am directed to say clarifying the G Govt. policy that horizontal reservation be granted in all medical colleges on total seats of all the courses to be filled through combined Pre-Medical Test (CPMT) 1994 as given below:

1. Real dependents of freedom fighters 5%

H 2. Sons/daughters of deceased/disabled soldiers 2%

3.	Physically handicapped candidates	2%
4.	Candidates belonging to hill areas	3%
5.	Candidates belong to Uttaranchal areas	3%

2. The above reservation would be horizontal and the candidates of the above categories, selected on the basis of merit, would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes/General to which they belong. For example, if a candidate dependent on a Freedom Fighter selected on the basis of reservation belongs to reserved for scheduled caste, (he will be adjusted against the seat reserved for S.C.?) Similarly, if a physically handicapped candidate selected on the basis of reservation belongs to other backward class or general category, he would be adjusted against the seats reserved for other backward classes or general category.

3. I am also directed to say that vertical reservation shall be granted in all medical colleges on total seats of all courses to be filled through C.P.M.T. 1994 as given below:

(a) Scheduled Caste Candidates	- 21%	30 seats
(b) Scheduled Tribe Candidates	- 21%	in each category
(c) Other Backward Class candidates	- 27%	reserved for ladies

4. 'Other backward Classes' mean the classes mentioned in Annexure-1 of Notification No. 488/XVII/-V-1-1 (Ka) 8-1994 dated 23.3.94 notified by Vidhiyaka Anubhag, Uttar Pradesh Adhiniyam No. 4/1994. The candidates of backward classes mentioned in Annexure-II of the aforesaid Adhiniyam would not be entitled for the reservation.

5. In am also directed to clarify that if a candidate of reserved category, mentioned in para 3 above, is selected alongwith general category candidates on the basis of merit, he shall not be adjusted against reserved seats, as G.O. in this regard has already been issued. So, 50% seats of general category shall be filled on the basis of merit prior to filling of reserve seats mentioned in para 3 above.

A Please ensure strict compliance of these orders.

Yours faithfully,
Sd/-
Ravindra Kumar Sharma
Sachiv"

B

This revised notification was brought to the notice of this Court at the hearing of the aforesaid writ petition. After noticing both the aforesaid notifications this Court (the Bench comprising R.M. Sahai, J. and one of us, Suhas C.Sen, J.) observed as follows :

C

"2. Reservation of 65% resulting in reducing the general category of 35% was undoubtedly violative of Article 16. Further by reserving 30% of the general seats for ladies the general category shrank to 5%. But these glaring infirmities have been rectified by the
D amended circular. Reservation of 30% for ladies has now been confined to para 3 of the amended circular. Dr. Dhavan, learned Senior Counsel appearing for the State clarified that he has instructions to make a statement on the amended circular that now there is no reservation for ladies in the general category.

E

3. Similarly, the other defect in the circular reserving 35% seats for general category has been removed. The vertical reservation is now 50% for general category and 50% for Scheduled Castes, Scheduled Tribes and Backward Classes. Reservation of 15% for various categories mentioned in the earlier circular which reduced
F the general category to 35% due to vertical reservation has now been made horizontal in the amended circular extending it to all seats. The reservation is no more in general category. The amended circular divides all the seats in CPMT into two categories - one, general and other reserved. Both have been allocated 50%. Para 2 of the circular explains that candidates who are selected on merit
G and happen to be of the category mentioned in para 1 would be liable to be adjusted in general or reserved category depending on to which category they belong, such reservation is not contrary to what was said by this Court in *Indra Sawhney*. Whether the reservation for such persons should have been made or not was not
H challenged, therefore, this Court is not required to examine it.

4. In the result this petition is disposed of by directing that in view of the circular issued by the Government on 17.12.1994 clarified by para 2 the grievance of the petitioner cannot be said to have been survived. The interim order passed by this Court staying the declaration of results is discharged."

This decision was rendered on February 2, 1995.

On February 14, 1995 the Government issued a clarification stating:

"I have been directed to say that partly modifying the G.O. No. 6550-Sec. 14-V/111/93 dt. 17.12.94 on the above subject, clause para 3 of the said G.O. shall be read as under :

3. I am also directed to say that vertical reservations shall be granted in all Medical Colleges on total seats of all Courses to be filled through C.P.M.T. 1994.

(i) Scheduled Caste Candidates	21%
(ii) Scheduled Tribes Candidates	2%
(iii) Other Backward Class Candidates	27%

The effect of this clarification is that reservation in favour of women has been removed from all the reserved categories.

The Lucknow University had issued a notification calling for applications for admissions to medical courses in the State in accordance with the notification of May 17, 1994. After the decision of this Court in *Swati Gupta* and in the light of the revised notification by the Government, as also the clarification issued on February 14, 1995, the University issued a corrigendum stating that the reservation in favour of five categories, viz., (1) actual dependents of freedom fighters - 5% (2) sons/daughters of soldiers/deceased/disabled in war - 2% (3) physically handicapped - 2%, (4) candidates of hill area - 3% and (5) candidates of Uttarakhand area - 3% (hereinafter referred to as in this judgment as "Special Categories") shall be horizontal reservations and not vertical reservations. The corrigendum stated :

"... following Horizontal reservation has been provided on the total

seats of all the courses of every Medical College to be filled on the basis of Combined Pre-Medical Test, 1994:

(1) Actual dependents of freedom fighters	5%
(2) Sons/daughters of Soldiers/deceased/ disabled in War	2%
(3) Physically Handicapped	2%
(4) Candidates of Hill Area	3%
(5) Candidates of Uttarakhand Area	3%

2. The above reservation will be horizontal and the candidates of above categories, selected on the basis of merit, would be kept under the categories of Schedule Caste/Schedule Tribe/Other backward Class/General to which they belong.

3. It is also informed that on total number of seats of every course in every Medical College through C.P.M.T. 1994. The following vertical reservations have been provided :

(1) Scheduled Caste Candidates	21%
(2) Scheduled Tribe Candidates	2%
(3) Other Backward Class Candidates	27%

4. It is also clarified that if any candidate belonging to Schedule Caste/Schedule Tribe/Other Backward Class categories is selected in open competition on the basis of merit, then he will not be adjusted in the seats reserved for concerned category. Therefore after filling the seats on the basis of horizontal reservation, the unreserved seats will be filled on the basis of merits and thereafter reserved seats for Schedule Caste/Schedule Tribe/Other Backward Class will be filled.

5. As per above mentioned provisions the provisions for reservations in application form and important guidelines for C.P.M.T. 1994 issued earlier will deemed to be modified accordingly.

6. Therefore, it is desired from the candidates falling under horizontal reservations that if they belong to Scheduled Caste, Scheduled Tribe or Other Backward Class Category, then they should send Caste Certificate on the following proforma giving his Roll number and examination details to the Registrar, Lucknow University by 28.2.95. If Caste Certificate is not received within the prescribed period, then it will be deemed that concerned candidates belongs to the General Category. Once a Caste Certificate is furnished same cannot be changed subsequently. The prescribed proforma of Caste Certificate is being sent to the concerned candidates falling under horizontal reservation through UPC for necessary action as aforesaid. In case proforma of Caste Certificate is not received by post, then same can be obtained by contacting Registrar, Lucknow University."

In accordance with the procedure aforesaid admissions have been made which are questioned in the present two writ petitions.

At the outset, we may mention a glaring illegality which has unfortunately not been raised in these writ petitions but is self-evident from the decisions of this Court. Under the revised notification dated December 17, 1994, three percent of the seats have been reserved for candidates belonging to hill areas and another three percent in favour of candidates belonging to Uttaranchal areas. These two reservations along with the reservations in favour of physically handicapped, children of deceased/disabled soldiers and dependents of freedom fighters are treated as horizontal reservations. In other words, the reservations in favour of hill areas and Uttaranchal areas are understood and treated as reservations relatable to Article 15(1) of the Constitution and not as reservations in favour of "socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes" within the meaning of Article 15(4) of the Constitution. It has been held by this Court in *State of Uttar Pradesh* v. *Pradeep Tandon,* [1975] 1 S.C.C. 267 that the reservation of seats in favour of candidates belonging to hill areas and Uttarakhand areas are reservations within the meaning of Article 15(4) of the Constitution, i.e., they are reservations in favour of socially and educationally backward classes of citizens. This Court found that "the State has established that the people in hill and Uttarakhand areas are socially and educationally backward classes of citizens". It, therefore, follows that a separate horizontal reservation of six percent of the seats in favour of candidates from hill areas

A and Uttaranchal apart from and in addition to twenty seven percent reservation in favour of other backward class candidates is clearly illegal. Though this contention has not been specifically raised in these writ petitions, we must yet take notice of this circumstance while making the appropriate directions in these matters. It is indeed surprising that the State of Uttar Pradesh which is a party to the above decision has failed to B bear it in mind. The said decision has also been referred to approvingly, in *Indra Sawhney*. The State of Uttar Pradesh shall keep this in mind for future selections as also in respect of those which may be now under way and make necessary corrections.

C We may now turn to the contentions raised in the writ petition.

In the initial notification calling for applications, the fifteen percent special reservations were treated as vertical reservations along with reservations in favour of Other Backward Classes, Scheduled Castes and Scheduled Tribes. Applications were accordingly received. But with the D issuance of the revised notification of December 17, 1994, the decision of this Court in *Swati Gupta* and the clarification contained in the letter dated February 14, 1995, these special reservations became horizontal reservations. Accordingly, a corrigendum was issued by the Lucknow University calling upon the candidates belonging to these special categories to specify to which social reservation category they belong. In other words, the E candidates who had applied under any of the said special reservations were asked to specify whether they belong to Scheduled Tribes, Scheduled Castes, Other backward Classes or to open competition category, as the case may be. It is stated that the candidates did indicate the same. According to the counter-affidavit now filed on behalf of the respondents, it appears that out of 2130 candidates who had applied against the five F special reservation categories only nine stated that they belong to Other Backward Classes. None stated that they belong to Scheduled Tribes or Scheduled Castes which meant that but for nine candidates, all the rest applying under the aforesaid special categories were from the general/non-reserved category. As we shall indicate presently, 110 out of 112 special G reservation candidates have been accommodated only in O.C. category and none in the O.B.C., S.C. or S.T. category.

Now, coming to the manner in which the said two-way reservations, viz., social reservations (vertical reservations) and special reservations (horizontal reservations) have been implemented, a few facts may be H noticed. In the counter-affidavit filed by the respondent (sworn-to by Sri

G.K. Bajpai) it is stated that the total number of seats available in M.B.B.S. course in the government colleges in Uttar Pradesh is 746. Fifteen percent of the said number comes to 112 seats. In Para 16, it is stated :

> "16. That in C.P.M.T. 1994 out of this 112 seats 101 students were selected and all of them belong to the General Category. The replying respondent filled up unreserved seats first and while doing so, 101 students selected on the basis of horizontal reservation since they belong to General Category, hence they have to be adjusted against unreserved seats. 9 belonging to Other Backward Classes Category has secured equivalent marks as General Candidates and thus were selected on merits. These candidates have been adjusted against unreserved category. The Roll number, names and total marks out of 1200 of these candidates are as follows :

1.	33936	Vinay Kumar Gupta s/o J.P. Gupta	974/1200
2.	16678	Sharad Candra s/o B.S. Yadava	971/1200
3.	28415	Ram Yash Singh Yadava s/o S.C.S. Yadava	957/1200
4.	10506	Neeraj Kumar s/o O.P. Yadava	950/1200
5.	60497	Zafar Neyas	947/1200
6.	47946	Vishal Singh s/o Y. Singh	947/1200
7.	47684	Rohit Yadava s/o V.S. Yadava	1003/1200
8.	15633	Monica Yadava s/o S.K. Yadava	954/1200
9.	57620	Mohd. Muddasir	944/1200

The remaining 263 seats were filled through General candidates

A and last candidate selected has secured 891 marks out of 1200 marks. 201 candidates of Other backward Classes were selected against reserved seats 157 against seats reserved for Scheduled Castes and 15 against seats reserved for Schedule Tribe. Similarly same procedure was applied in all the categories. Therefore, the contention of the petitioner that only 36% seats are filled with B General Candidates is wrong. A photostat copy of tabulated result is being filed herewith and marked is *Annexure R-IV* to to this affidavit."

A reading of Para 16 makes it clear that the authorities in- charge of C making admissions first took up the special category reservations and filled them up. Of the 112 candidates, 101 were from what may be called for the sake of convenience, 'unreserved category' while nine candidates belonged to Other Backward Class category. But it appears that inasmuch as the said nine candidates belong to Other Backward Classes had secured equal D marks with the general candidates and were accordingly selected on merit in the O.C. quota, they were treated as Open competition candidates. The result was that out of 112 seats reserved for special categories, 110 seats were taken away from the Open competition (O.C.) category, thus leaving only 263 seats for the general candidates, i.e., O.C. candidates not belonging to any of the special reservations. It is the above method of filling of E seats that has been challenged in these writ petitions.

The contention of the learned counsel for the petitioners is two fold : (i) by virtue of the revised notification of December 17, 1994, the decision of this Court in *Swati Gupta* and the corrigendum notification issued by F the Lucknow University, it is clear that the special reservation seats are to be distributed and allocated proportionately among the social, i.e., vertical reservation categories. Had it been so done, only fifty six candidates belonging to special reservation categories could be accommodated in the O.C. category. But, the respondents have accommodated 110 special reser- G vation candidates in the O.C. category, an excess of fifty four seats. These fifty four seats must be taken away from the special reservation categories and allotted to O.C. candidates not belonging to any special reservation category. (ii) The procedure prescribed in the aforesaid revised notification for filling up the vacancies is equally illegal which has also resulted in the H dimunition of seats available for O.C. category. The admissions should be

re- done thoroughly to rectify the said error. A

On the other hand, the learned counsel for the respondents justify the procedure prescribed in the revised notification for making the admissions. With respect to the first contention of the learned counsel for the petitioners, the submission of the learned counsel for the Lucknow University and the State of Uttar Pradesh is that the fifteen percent reservation B in favour of special categories (special reservation) is an *overall* reservation and not a *compartmentalised* reservation. They submit that these special reservations are not divided proportionately among the vertical (social) reservation categories and, therefore, these special reservation candidates have to be provided fifteen percent of the total seats (i.e., 112 seats) overall, C whether by adjusting them against any of the social/vertical reservations or otherwise.

The question is which of the above interpretations is the correct one having regard to the language employed in the concerned notifications? D

On a careful consideration of the revised notification of December 17, 1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question E whether the horizontal reservations are *overall reservations* or *compartmentalised reservations*. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing F fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs.; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty G special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number H

of special reservation candidates (56 out of 373)are available in O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). *As against this,* what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that on the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be 56 + 20 = 76. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quote of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the *inter se* quota between O.C., O.B.C., S.C. and S.T. will not be altered.

Now coming to the revised notification of December 17, 1994, it says that "*horizontal reservation* be granted in all medical colleges *on total seats* of all the courses...". These words are being interpreted in two different ways by the parties; one says it is over-all reservation while other says it is compartmentalised. Paragraph 2 says that the candidates selected under the aforesaid special categories "would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other backward Classes/General to which they belong. For example, if a candidate dependent on a freedom fighter selected on the basis of reservation belong to Scheduled Castes, he will be adjusted against the seat reserved for Scheduled Castes". This is sought to be read by the petitioners as affirming that it is a case of compartmentalised reservation. May be or may not be. It appears that while issuing the said notification, the Government was not conscious of the distinction between overall horizontal reservation and compartmentalised horizontal reservation. At any rate, it may not have had in its contemplation the situation like the one which has arisen now. This is probably the reason that this aspect has not been stated in clear terms.

It would have been better - and the respondents may note this for their future guidance - that while providing horizontal reservations, they

should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "overall horizontal reservation" and "compartmentalised horizontal reservation", since it appears from the judgment in *Swati Gupta* that in the first notification issued by the Government of Uttar Pradesh on May 17, 1994, the thirty percent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven percent but at the same time it was stated that thirty percent of those seats were reserved for ladies. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalised horizontal reservation". We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year.

Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen percent special reservation seats to be filled up first and then take up the O.C. (merit) quota (followed by filling of O.B.C., S.C. and S.T. quotas). The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an over-all horizontal reservation no further question arises. But if it is not so satisfied, the requisite number of special reservation can-

didates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the O.C. quota.

In this connection, we must reiterate what this Court has said in *Indra Sawhney*. While holding that what may be called "horizontal reservation" can be provided under clause (1) of Article 16, the majority judgment administered the following caution in para 744: "(B)ut at the same time, one thing is clear. It is in very exceptional situation - 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 the specific situation. The very presence of clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under clause (4) as well as under (1), the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do". Though the said observations were made with reference to clauses (1) and (4) of Article 16, the same apply with equal force to clauses (1) and (4) of Article 15 as well. In this case, the reservation of fifteen percent of seats for special categories was on very high side. As pointed out above, two categories out of them representing six percent out of fifteen percent are really reservations under Article 15(4), wrongly treated as reservations under Article 15(1). Even otherwise, the special reservation would be nine percent. The respondents would be well advised to keep in mind the admonition administered by this Court and ensure that the special reservations (horizontal reservations) are kept at the minimum.

Having pointed out the errors in the rule of reservation and its implementation, the question arises what should be done now? Should we

interfere with the admissions already finalised? We think it inadvisable to do so. It may be remembered that the admissions now finalised (in June-July, 1995) are really the admissions which ought to have been finalised one year back. The delay has occurred on account of the first faulty notification (issued on May 17, 1994).When a writ petition was filed in this court-probably some writ petitions in the High Court also - the Government realised its mistake and issued the revised notification on December 17, 1994. It dropped the reservation in favour of women in stages. The University had then to issue a corrigendum asking the special category candidates to indicate their social status. This was a delayed exercise which ought to have been undertaken at the beginning itself. Even the manner in which the seats have been filled up, as indicated above, is faulty. What we have laid down herein is more for the purpose of future guidance for the respondents. At the same time, we have to rectify the injustice done to the open competition candidates in the admissions in question, to the extend feasible. Accordingly, we direct that in the matter of admissions made pursuant to C.P.M.T. 1994, while the admissions already finalised shall not be disturbed, the Uttar Pradesh Government shall create thirty four additional seats in the M.B.B.S. course and admit thirty four students from the O.C. category against those seats. If any seats are vacant as on today, they shall also be filled from the O.C. category alone. (It is made clear that O.C. category means the merit list and no distinction shall be made among the candidates in the O.C. list on the basis of their social status because it is well settled that even a S.T./S.C./O.B.C. candidate is entitled to obtain a seat in the O.C. category on the basis of his merit.) The counsel for the petitioners complain that fifty four students belonging to O.C. category have been deprived on account of respondents' faulty actions and that it should be directed to be made up. We cannot agree. The factual basis of this submission is debatable in view of the ambiguity mentioned hereinbefore. We have directed creation of thirty four seats (making a total of 780 seats this year) having regard to all the facts and circumstances of the case. This creation of additional seats is restricted to current admissions only and shall not be a permanent feature. The Uttar Pradesh Government/concerned authorities shall allocate the said thirty four additional seats appropriately among the government medical colleges and make admissions thereto as early as possible.

We hope and trust that the respondents will ensure that a similar situation does not arise for the ensuing admissions.

A The writ petitions are disposed of with the above terms. No costs.

A copy of this judgment shall be communicated to the Chief Secretary, Government of Uttar Pradesh and the Secretary, Medical Education and Training, Government of Uttar Pradesh *eo nomine* (i.e., by their designation) for their attention and implementation.

B

V.S.S. Petitions disposed of.