

# **Atul Khullar & Ors. Etc. Etc vs State Of J & K And Ors. Etc. Etc on 15 April, 1986**

**Equivalent citations: 1986 AIR 1224, 1986 SCR (2) 560, AIR 1986 SUPREME COURT 1224, 1986 SCC (SUPP) 225, 1986 2 UJ (SC) 421, 1986 SCC (L&S) 608, (1986) 2 SCJ 384, (1986) 3 SUPREME 305, (1986) 2 CURCC 721**

**Author: R.S. Pathak**

**Bench: R.S. Pathak, O. Chinnappa Reddy, R.B. Misra**

PETITIONER:

ATUL KHULLAR & ORS. ETC. ETC.

Vs.

RESPONDENT:

STATE OF J & K AND ORS. ETC. ETC.

DATE OF JUDGMENT 15/04/1986

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

REDDY, O. CHINNAPPA (J)

MISRA, R.B. (J)

CITATION:

1986 AIR 1224                      1986 SCR (2) 560

1986 SCC Supl. 225              1986 SCALE (1) 1329

CITATOR INFO :

R                      1989 SC 1899 (32)

ACT:

Professional Colleges - Admission to Medical/  
Engineering Colleges - Selection of candidates from backward  
areas/classes - Validity of. Selection Procedure -  
Allocation of only 85 points to written test and 15 points  
to viva voce Whether gives weightage to viva voce over  
written test. Viva voce test - Reference of components -  
Behaviour, physical bearing and power of oral expression -  
Worksheets of individual members of Selection Committee -  
Need to maintain. Selection/Nomination of candidates -  
Relevance of merit in the Select List.

HEADNOTE:

The petitioners challenged the selection of candidates for admission to the first year of the MBBS and BDS degrees in the Government Medical Colleges at Srinagar and Jammu, the B.E. First Year Course in the Regional Engineering College, Srinagar, and the nominations made by the State Government to the Medical and Engineering Colleges outside the State for the academic year 1984-85.

Admission to these courses was through entrance examinations consisting of a written test and a viva voce test, conducted separately for the medical and engineering courses. Under the procedure laid down in the Jammu & Kashmir Government Medical Colleges (Selection of Candidates for Admission to the First Year MBBS Course) Procedure Order, 1983, the written test carried 85 points and the viva voce test 15 points, making a total of 100 points. The points reserved for the viva voce test were sub-divided into 8 points for "Aptitude" and 7 points for "General knowledge and General Intelligence". A similar procedure was prescribed for admission to the Regional Engineering College, Srinagar. The entire proceedings during the interviews were to be recorded on a tape recorder. Fifty per cent of the total admissions were to be affected on the basis of open merit and the

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remaining fifty per cent on the basis of merit from amongst A reserved categories including the Scheduled Castes, socially and educationally backward classes as well as residents of backward areas. Nominations to the institutions outside the State were to be made on the basis of merit in the select list.

Annexure 1 to SRO 272 issued by the State Government on July 3, 1982 enumerated 1153 villages short of the Actual Line of Control Zone as backward areas of the State. SRO 334 dated June 13, 1983, raised this figure to 1754 villages. Thereafter SRO 335 dated June 14, 1983 added 25 villages and SRO 412 dated August 27, 1984 another 14 villages with the result that 1793 villages constituted the backward areas of the State. In regard to the Actual Line of Control Zone, SRO 335 added 9 villages to the 347 villages identified earlier. Candidates claiming consideration under the backward areas category were required to enclose a certificate by the Tehsildar in support of their claim to that benefit.

It was contended for the petitioners that the selection of several candidates from the backward areas categories, including areas near the Actual Line of Control Zone, was invalid as the category includes areas which were not originally included in Annex. 1-to SRO 272 but have been added subsequently, that candidates shown as residing in urban areas of cities cannot be regarded as candidates from the backward areas category even though their respective families hailed from such areas, that the absence of minimum qualifying standard renders the selection of candidates from

reserved areas categories arbitrary and invalid, that the allocation of only 85 points to the written test and as many as 15 points to the viva voce of a total of 100 point gives a weightage to the viva voce test over the written test which was unreasonable, that the marks assigned to the candidates during the viva voce test had been manipulated in order to ensure that the number of candidates selected from the Valley of Kashmir corresponded in proportion to the respective strengths of the communities in Kashmir, that notwithstanding the specific order made by the Court on March 19, 1985 the respondent State had failed to produce the worksheets of the individual members of the Selection Committee, that the Selection Committee by taking into account the behaviour,

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physical bearing and power of oral expression of the candidates under the "general intelligence" during the viva voce test, had given importance to considerations which were hardly relevant for assessing the intelligence and suitability of the candidates, that candidates with inferior merit in the select list were admitted over the head of those with superior merit, and that the nominations of candidates made by the State Government to colleges outside the State were invalid in as much as they violated the criteria laid down by this Court.

The special leave petition had been filed by the candidates against the order of the High Court setting aside their selection because of their inferior merit in the select list.

Dismissing the writ petitions and the special leave petition, the Court,

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HELD : 1. The State Government could not be said to have acted arbitrarily and without reason in identifying and adding more backward villages to the number enumerated in SC0 272 dated July 3, 1982. That list was open to further enlargement, and so was the case with subsequent notifications. It is perfectly possible for the conditions of a village to change during the years, and it is quite conceivable that a village considered suitably developed at one time should deteriorate thereafter to the point of becoming backward. [570 C-E]

2. Temporary residence in an urban area cannot deny a candidate the right of admission on the basis of a reserved category if in fact he belongs permanently to a village in a backward area. Because of the lack of higher educational facilities a candidate belonging to a village in the backward area may have to reside temporarily in a city where such education is available. It may also be that a parent of the candidate may pursuant to his employment, have taken up residence in an urban area. That in itself does not snap the bond between the candidate's family and their village, so long as the assumption of residence in the city is

occasioned by temporary necessity. The candidates who claimed the benefit of permanent residence in backward areas have filed a certificate

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from the Tehsildar in the prescribed form in support of their A claim, and there is nothing on record ex facie to doubt the correctness of that certificate. [571 F; 572 A-C; 571 B-C]

3. The advertisement calling for applications for admission prescribed the minimum percentage of marks required in the specified examinations as a condition of eligibility for candidates generally, while laying down a lower minimum percentage for candidates belonging to reserved categories. That ensured not only that candidates with sufficiently suitable academic level were alone permitted to apply but also that the minimum percentage of marks attained by candidates from the several categories in the entrance examination would not fall below a reasonable level. Though no minimum has been prescribed as the bottom line for selecting candidates from the reserved categories, no such minimum has been prescribed for selecting candidates from the general category either. The rule must be that candidates are selected for admission from the different categories according to the order of merit. [572 F-H; 573 A-C]

4. The allocation of only 85 points to the written test and as many as 15 points to the viva voce test out of 100 points does not give a weightage to the viva voce test over the written test. It cannot be said to create an unreasonable imbalance in the evaluation of a candidate's ability. [573 F-G]

Koshal Kumar Gupta & Ors. v, State of J & K & Ors., [1984] 3 S.C.R. 407 referred to.

5. Unless there was clear evidence to show that there was a conscious attempt to ensure that the selection of candidates from different communities corresponded to the strength of those communities in the Valley of Kashmir, it cannot be said that there was any deliberate connection between the number of candidates selected and the strength of the respective communities from which they hail. [574 C-E]

Triloki Nath & Anr, v. State of Jammu & Kashmir & Ors., [1969] 1 S.C.R. 103 referred to

6. A Selection Committee conducting the viva voce test should maintain the entire record, including the original worksheets on which the marks have been recorded by each

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member separately, for a minimum period of one year after the examination. Failure to do so could strengthen an allegation of malafides against the Selection Committee. [575 F-G]

7. Where a viva voce test is permissible for the purpose of adjudging the general intelligence of the

candidates, its three components behaviour, physical bearing and the power of oral expression become relevant. The presence of mind displayed by a candidate in answering a question in an index of general intelligence, and his power of oral expression is evidence of his ability to communicate intelligently. The third component-physical bearing, possesses a somewhat remote connection with general intelligence. It denotes the physical manner in which the candidate responds to the stress and tension experienced by him during the interview. Though tenuous, this component is not so unrelated to general intelligence that it could be said to be an unreasonable element in deciding on a candidate's suitability. [577 F-H; 578 A-B]

8. The admission of candidates is liable to be quashed unless they have been selected by virtue of their merit in the select list. If a candidate not holding a position of merit has been erroneously selected, the candidate who is qualified by virtue of his position in order of merit is entitled to be admitted in his place. [579 G-H]

9. Nominations to medical and engineering colleges outside the State shall be made strictly on the basis of a writ in the select list. The State Government must nominate candidates in place of the vacancies arising thereafter in accordance with the merit list which was in force in the State. [579 F]

Suman Gupta & Ors. v. State of J & K & Ors., [1983] 3 S.C.R. 985 followed.

#### JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 3023-32 of 1985 etc. Under Article 32 of the Constitution of India. Dr. Y.S. Chitale, Altaf Ahmad, S.K. Bisaria, S.K. Bhattacharya, S.C. Patel, Subhash Sharma, L.R. Singh, B.B. Sawhney, Ms. Indra Sawhney, Mrs. Jaya Mala and K. Bansi Lal A for the Petitioners.

S.N. Kacker, M.H. Baig, E.C. Agarwala, R. Sathish, V.K. Pandit, Shabir Ahmed for the Respondents.

The Judgment of the Court was delivered by PATHAK, J. On May 10, 1985 we delivered an order in these cases disposing of the writ petitions and special leave petitions. We stated that the reasons for the order would be pronounced later. The hearing of these cases had been completed only a few days before the commencement of the Long Vacation and as counsel for the parties desired that we deliver the order before the Court closed we did so. We now set forth the reasons.

The large group of writ petitions and special leave petition before us fall into two groups. A number of them challenge the selection of candidates for admission to the first year course of the M.B.B.S. Degree and the B.D.S. Degree in the Government Medical Colleges at Srinagar and Jammu for the session 1984-85. They also challenge the nominations of students from Jammu and Kashmir by the

State Government to Medical Colleges outside that State. The other group of cases challenges the validity of the Select List for admission to the B.E. First Year course of studies at the Regional Engineering College, Srinagar and also assails the validity of nominations made by the State Government to Engineering Colleges outside the State.

Medical Group F On June 10, 1984 the Government of Jammu and Kashmir published an advertisement inviting applications from permanent residents of the State for admission to the First Year M.B.B.S. Course in the Medical Colleges of the State for the session 1984-85. To be eligible, candidates should have passed one of the qualifying examinations mentioned therein and should have studied in the recognised educational institutions in the State. Fifty per cent of the total admissions were to be affected on the basis of open merit while the remaining fifty per cent were to be selected on the basis of their merit from certain reserved categories, including Scheduled Castes, Socially and Educationally Backward classes comprising weak and under-privileged classes (Gujjar and Bakarwal and other social castes), as well as residents of backward areas. Eligible candidates were to appear in a written entrance test and a viva voce test. The backward areas consisted of the areas enumerated in Annexure I to S.R.O. 272 dated July 3, 1982 issued by the State Government and prepared on the basis of the Wazir Committee Report and the Anand Committee Report as well as the Census Reports of 1971. To those villages were added a number of others by Notification No. SRO 335 dated June 14, 1983 and S.R.O. 412 dated August 27, 1984. Candidates claiming consideration under the backward areas category were required to enclose a certificate by the Tehsildar in support of their claim to that benefit.

Thereafter the State Government issued S.R.O. 380 dated July 7, 1983 modifying the Notification S.R.O. 272 dated July 3, 1982, and promulgating the Jammu and Kashmir Government Medical Colleges (Selection of Candidates for Admission to the First Year M.B.B.S. Course) Procedure Order, 1983. merely the written test was to carry 85 points and the viva voce test was to carry 15 points, making a total of 100 points. the points earmarked for the viva voce test were further sub-divided into (a) Aptitude, carrying 8 point and (b) General Knowledge and General Intelligence, carrying 7 points. On August 9, 1984 the State Government sanctioned the constitution of an Admission Selection Committee for the selection of candidates for admission to the two Medical Colleges of the State for the session 1984-

85. The Chairman of the Public Service Commission was appointed Chairman of the Admission Selection Committee, and the Principal, Government Medical College, Srinagar and the Principal Government Medical College, Jammu were to be its two members. The Committee was empowered to arrange and conduct the written test and to evolve its own procedure for the appointment of Examiners, the setting of papers and the conduct of the Examination. The Selection Committee decided that the Principals of the two Medical Colleges, who were Members of the Committee, would set the question papers and the answer books would be evaluated by a list of Examiners drawn up by the Committee. The viva voce Examination was to be conducted by a procedure which envisaged the preparation of question cards on each subject, the question cards would be kept in the interview room during the interview and individual candidates would be asked to draw the question cards of their choice, each candidate being required to pick up one card from each group and after reading the question the candidate was to give his oral answer. The Committee would assess the

performance of each candidate and allot points in accordance with the provisions of S.R.O. 380 dated July 7, 1983. The entire proceeding during the interviews was to be recorded by tape recorders.

The written tests were held at Srinagar and Jammu on September 12 and 13, 1983, and the answer scripts were evaluated from October 1, 1984 to October 13, 1984. The viva voce test was conducted at Srinagar from October 8, 1984 to October 17, 1984 and at Jammu from November 19, 1984 to November 24, 1984. Before the interviews comprising the viva voce test were commenced the Admission Selection Committee decided on October 8, 1984 that the 15 points allocated to the viva voce test should be further sub-divided as follows :

Aptitude	...	8 Points
1. Physics	... 2 points	
2. Chemistry	... 2 points	
3. Biology	... 4 points	
(Botany)	... 2 points	
(Zoology)	... 2 points	

General Knowledge and General Intelligence 7 Points

1. General Knowledge ... 4 points

2. General Intelligence ... 3 points

(a) Presence of mind ... 1 point

(b) Physical Bearing ... 1 point

(c) Expression ... 1 point Earlier the State Government had published an advertisement dated September 19, 1984 inviting applications from residents of the State for training in the B.D.S. Course in various Dental Colleges of different States for the session 1984-85, and on September 21, 1984 the State Government wrote to the Admission Selection Committee that while holding interviews of candidates for admission to the M.B.B.S. Course it should give an option to the candidates to choose whether they would like to be considered for training in the B.D.S. Course during the current session, and that accordingly such candidates should be interviewed in accordance with the provisions of Notification S.R.O. 380 dated July 7, 1983. Nine candidates were to be selected for that Course.

On January 19, 1985 the State Government published a list of candidates selected for admission to the First Year M.B.B.S. Course in the two Government Medical Colleges of the State and to the First Year B.D.S. Course in the Government Medical College, Srinagar for the session 1984-

85. For the First Year M.B.B.S. Course 76 candidates were selected on the basis of open merit and 74 candidates were selected from the reserved categories, making 150 candidates in all. Nine candidates were selected for admission to the First Year B.D.S. Course.

Beside the selection of candidates for admission to the Medical Colleges of the State of Jammu and Kashmir, the State Government nominated certain candidates for admission to Medical Colleges outside the State. These included nominations of candidates for admission to the M.B.B.S. Course and the B.D.S. Course in the Medical Colleges of the State of Tamil Nadu. The petitioners are candidates who applied for admission to the First Year M.B.B.S. Course and the First Year B.D.S. Course in the Government Medical Colleges of the State of Jammu and Kashmir, but were not included in the Select List respecting those Medical Colleges nor were nominated for admissions to any Medical College outside the State. They challenge the selection of candidates for admission to the Medical Colleges of the State as well as the nominations made for admission to Medical Colleges outside the State.

Learned counsel for the petitioners has taken us through a historical survey of the various stages of evolution in Jammu and Kashmir of the procedure for selecting candidates for the professional courses of medicine and engineering, culminating in the procedure employed for the purpose of the present selections. The successive decisions of this Court, from *Triloki Nath & Anr. v. State of Jammu & Kashmir & Ors.*, [1969] 1 S.C.R. 103 onwards, have been placed before us and our attention has been invited to the contents of the Wazir Committee Report, the Anand Committee Report and other material which has entered into the formulation of the scheme for admission.

It is contended by learned counsel for the petitioners that the selection of several candidates from the Backward Areas category, including areas near the Actual Line of Control, is invalid inasmuch as the category includes areas which were not included originally in Annexure I to Notification S.R.O. 272 dated July 3, 1982 but have been added subsequently, and that candidates not belonging to backward areas have been selected under the reserved category. The first prong of attack proceeds on the assumption that the area added to those enumerated in Annexure I to Notification S.R.O. 272 dated July 3, 1982 could not have been treated as backward areas. It is urged that the villages enumerated in Annexure I to S.R.O. 272 dated July 3, 1982 had been selected on the basis of criteria set forth in the Wazir Committee Report, the Anand Committee Report and the Census Reports of 1971, and no further areas could be added to that list which was completely exhaustive. It is pointed out that the Actual Line of Control had all along remained unaltered after the Simla Agreement and there was no basis for adding to the villages defined by their proximity to it. We are unable to accept the submission. In regard to the backward areas short of the Actual Line of Control Zone, the Wazir Committee Report had identified 696 villages as constituting the backward areas of the State. The Anand Committee Report enlarged the number to 1153 villages. S.R.O. 334 dated June 13, 1983 identified as many as 1754 villages in that category. Thereafter S.R.O. 335 dated June 14, 1983 added 25 villages and S.R.O. 412 dated August 27, 1984 added another 14 villages. In the result, 1793 villages constituted the backward areas of the State. In regard to the Actual Line of Control Zone, S.R.O. 335 dated June 14, 1983 added 9 villages to the 347 villages identified earlier. The additional villages added by S.R.O. 335 dated June 14, 1983 and S.R.O. 412 dated August 27, 1984 by the State Government were so added after the Cabinet of Ministers had considered the material placed before it and taken a decision thereon. The material included reports from the District Development Commissioners concerned. It is apparent from the Memorandum submitted to the Cabinet that the criteria formulated by the Wazir Committee Report, the Anand Committee Report and the data contained in the Census Reports of 1971 were present to the mind of the Cabinet when the Orders



were made. These comprised the same criteria as formed the basis of identifying backward areas in S.R.O. 272 dated July 3, 1982. The District Development Commissioners of the district concerned had already gone into the matter, and after holding meetings of the District Development Boards they had made the recommendations responsible for the addition of those villages. We are not satisfied that the material before the State Government was such that the State Government can be said to have acted arbitrarily and without reasons. We are of opinion that S.R.O. 335 dated June 14, 1983 and S.R.O. 412 dated August 27, 1984 cannot be regarded as invalid on that ground. We are also of the view that the list of villages enumerated in S.R.O. 272 dated July 3, 1982 cannot be regarded as a final and complete list for all time of villages constituting the backward areas. It is perfectly possible for the conditions of a village to change during the years, and it is quite conceivable that a village considered suitably developed at one time should deteriorate thereafter to the point of becoming backward. Therefore we hold that not only was the number of villages enumerated in Annexure I to S.R.O. 272 dated July 3, 1982 open to further enlargement, there was also good material on the basis of which the particular villages mentioned by the State Government in the subsequent Notifications could be legitimately added to the list of backward areas.

The second part of the contention set forth earlier is that candidates not belonging to backward areas have been selected for admission from the reserved categories. The petitioners have indicated several names in the Select List who, they say, should not have been given admission. We have gone through the entire list and carefully considered the facts pertaining to those candidates whose inclusion has been challenged by the petitioners. We find no sufficient material for sustaining the challenge made by the petitioners. With the assistance of counsel for the parties we have considered the case in respect of each of the candidates selected in the backward area categories, the Line of Actual Control Category and the B.D.S. Course and we find that in each case the candidate can be said to belong to a village listed as a backward area either in S.R.O. 272 dated July 3, 1982 as originally framed or pertaining to S.R.O. 335 dated June 14, 1983 or S.R.O. 412 dated August 27, 1984. In some cases the candidates had given an address in Jammu, and it is contended by the petitioners that such candidates could not be regarded as belonging to a backward area. The candidates who claimed the benefit have filed a Tehsildar's Certificate in the prescribed Form in support of their claim, and there is nothing on record *ex facie* to doubt the correctness of that Certificate. Nor is it for the Court in this proceeding to inquire into the correctness of the Certificates. Annexure II to Notification S.R.O. 272 dated July 3, 1982 makes provision for the grant of such Certificate, their prescribed Forms, the authority entrusted with the power to grant them and the conditions subject to which they can be granted. Even if this Court could be said to possess jurisdiction to enter into an inquiry whether the Tehsildar's Certificates are valid and reliable documents, it appears difficult, having regard to the state of the record before us, to sustain the challenge to their validity. A specific submission has been made in regard to the selections of Meenakshi Kotwal, Inderjit Singh and certain other candidates who have been shown as residing in the City of Jammu, and it is urged that they cannot be regarded as candidates from the backward areas category even though their respective families hail from such areas. It appears to us that their residence in the City of Jammu is essentially of limited and temporary duration, and to our mind, temporary residence in an urban area cannot deny those candidates the right to admission on the basis of a reserved category if in fact they belong permanently to a village in a backward area. Appendix II of Annexure II to S.R.O. 272 dated July 3, 1982 requires that a candidate claiming to be

a permanent resident in areas adjoining the Actual Line of Control or in other backward areas should establish the ground of his claim before the Tehsildar before he can be issued a certificate in that behalf. The Tehsildar has granted a certificate to the different candidates whose title to consideration as members of the reserved categories has been challenged by the petitioners, and there is no satisfactory material before us to indicate that the basis underlying the certificate is entirely without substance. A candidate may belong to a village in terms of the requirement prescribed by the Anand Committee Report and because of the lack of higher educational facilities he may have to reside temporarily in a city where such education is available. It may also be that a parent of the candidate may pursuant to his employment, have taken up residence in an urban area. That in itself does not snap the bond between the candidate's family and the village, so long as the assumption of residence in the city is occasioned by temporary necessity.

A specific challenge has also been made to the selection of the candidate Farooq Ahmed (Roll No. 503) who is said to have been actually awarded 41.31 points but has been shown as having got 44.31 points. We have carefully examined the matter and in our opinion it appears that a mistake had been committed in the original recording of marks, and the mistake was removed by finally correcting the candidate's tally to 44.31 points.

A complaint has been made by the petitioners that in the case of candidates from reserved area categories no qualifying minimum has been prescribed and, therefore, no matter what the marks attained by him the candidate has to be regarded as entitled to selection. It is contended that the absence of minimum qualifying standard renders the selection of candidates from reserved area categories arbitrary and invalid. The contention must fail. In the first place, the advertisement calling for applications for admission to the Medical Colleges clearly prescribes the minimum percentage of marks required in the specified examinations as a condition of eligibility. While a minimum percentage of marks has been prescribed for candidates generally, a lower minimum percentage has been laid down for candidates belonging to the categories of Scheduled Castes, Gujjars, Bakarwals and candidates hailing from the Districts of Leh and Kargil. That ensures that candidates with a sufficiently suitable academic level are alone permitted to apply. It can be expected that having regard to the minimum qualifying percentage applied as a condition of eligibility for the purpose of submitting applications, the minimum percentage of marks attained by candidates from the several categories in the entrance examination will not fall below a reasonable level. There is no doubt that no minimum has been prescribed as the bottom line for selecting candidates from the reserved categories, but no such minimum has been prescribed for selecting candidates from the general category either. There is a limited number of seats, and the allocation of those seats between candidates from the general category and candidates from the reserved categories has been fixed. The rule must be that candidates are selected for admission from the different categories according to the order of merit.

It was faintly urged that admissions to the B.D.S. Course within the State has been affected without separate applications from the candidates. It appears, however, that each candidate was asked whether he was interested in being considered for admission to the B.D.S. Course, and that all, or at least most, of them opted for being so considered in addition to the M.B.B.S. Course of studies.

Another contention raised by the petitioners is that the answers in some of the answer scripts have not been assigned marks. We examined the answer scripts placed before us and we could find nothing to substantiate the grievance of the petitioners.

There was a general submission that the procedure followed in conducting the written test and the viva voce test by the Selection Committee was invalid. We have examined the detailed procedure followed in preparing the question papers and evaluating the answer scripts and have considered other aspects of the matter. The petitioners have not succeeded in establishing that the procedure is materially defective. It is urged that the allocation of only 85 points to the written test and as many as 15 points to the viva voce test out of a total of 100 points gives a weightage to the viva voce test over the written test which is unreasonable. We are unable to agree that the allocation of 15 points to the viva voce test creates an unreasonable imbalance in the evaluation of a candidate's ability. See *Koshal Kumar Gupta & Ors. v. State of J & K & Ors.*, [1984] 3 S.C.R. 407.

The next contention is that the dates for the written test and for the viva voce test were so fixed that it was possible for the Selection Committee conducting the viva voce test to know before hand what were the marks obtained by each candidate in the written test. The suggestion is that it was possible for the Selection Committee to favour some candidates at the expense of the others during the viva voce test in order to make good any deficiency in the marks awarded in the written test. As we have mentioned earlier, the written test was conducted on September 12 and 13, 1984. The answer books were evaluated from October 1, 1984 to October 13, 1984. The viva voce test commenced at Srinagar from October 8, 1984. We are not satisfied upon the material before us that there is any substance in the allegation levelled by the petitioners.

The main attack by the petitioners has been directed against the procedure adopted during the viva voce test. It was vehemently urged by the petitioners that the marks assigned to the candidates during the viva voce test had been manipulated in order to ensure that the number of candidates selected from the communities constituting the population of the Valley of Kashmir corresponded in proportion to the respective strengths of these communities in Kashmir. The submission was made apparently to gain support from the decision of this Court in *Triloki Nath's case* (supra) and the cases following it. The petitioners have, however, been unable to establish that there is any deliberate connection between the number of candidates selected and the strength of the respective communities from which they hail. To establish this allegation something more is required. There must be clear evidence to show that there was a conscious attempt to ensure that the selection of candidates from different communities corresponded to the strength of those communities.

It is then urged that individual candidates were specially favoured during the viva voce test because they were children or relations of senior Professors or teachers of the Medical Colleges or of highly placed officers in the State Government or possessed powerful political connections within the State. We sent for the cassette tapes which recorded the oral interviews held by the Selection Committee during the viva voce test. The petitioners placed only a few of these cassette tapes before us, and we have carefully heard them played before us. We are unable to reach the conclusion that the charge levelled by the petitioners is substantiated.

Then it is pointed out that notwithstanding the specific order made by this Court on March 19, 1985 requiring the respondent State to produce the work-sheets of the individual Members of the Selection Committee prepared during the viva voce test no such document was placed before the Court amidst the voluminous records brought by the respondent into Court. When this omission was pointed out during the hearing of these cases, learned counsel for the State Government and the Selection Committee informed us that the work-sheets had been destroyed after the marks had been recorded in the final Roll and before our order was passed. We are not at all happy about that statement. The Selection Committee can be presumed to have known that the selections made for admission to the Medical Colleges of Jammu and Kashmir would be challenged in court, even as they had year after year in the past. Indeed some unsuccessful candidates had already filed writ petitions in the High Court assailing the selection shortly after the publication of the list of successful candidates. Common sense and reason required the Selection Committee to preserve the Work-sheets on which they had recorded the marks awarded to individual candidates during the viva voce test. It is urged on behalf of the State Government and the Selection Committee that it was considered appropriate to destroy the work-sheets so that candidates would not know the particular marks awarded by the individual members of the Selection Committee. The plea is specious and weak and affords no excuse. The work-sheets should have been kept in a sealed cover for a period of time. As however the cassette tapes selected by learned counsel for the petitioners have been played before us, and we have found nothing there to throw doubt on the marks assigned to the particular candidate, we shall refrain in this case from drawing any adverse conclusion against the Selection Committee. We find it necessary, however, to emphasise that a Selection Committee conducting the viva voce test should maintain the entire record, including the original work-sheets on which the marks have been recorded by each Member separately, for a minimum period of one year after the Examination. Failure to do so can strengthen an allegation of malafides against the Selection Committee.

We shall now deal with the challenge made by the petitioners to the nominations affected by the State Government of candidates to Medical Colleges outside the State. Three candidates, Syed Manzoor Ahmed Bhukari, Rajinder Krishan Raina and Monika Verma were nominated to the B.D.S. Course in the King George's Medical College, Lucknow. The petitioners do not dispute that the first two of these candidates were rightly nominated. The challenge is confined to the third candidate, namely, Monika Verma, and the ground underlying it is that she does not belong to the reserved category of "Line of Actual Control". That Monika Verma belongs to that reserved category is supported by the Tehsildar's Certificate in her favour, and we are not satisfied that the certificate can be successfully assailed. Besides, the nominations to the King George's Medical College, Lucknow, six nominations were made to Medical Colleges in the State of Tamil Nadu, three to the MBBS Course and three to the BDS Course. It is conceded by learned counsel for the State Government that the six nominations are invalid inasmuch as they violate the criteria laid down by this Court in *Suman Gupta and Ors. etc. v. State of Jammu and Kashmir & Ors.*, [1983] 3 S.C.R. 985 as clarified by this Court by its Order dated September 22, 1983. They are liable to be quashed.

**Engineering Group** The petitioners in these writ petitions challenge the selection of candidates for admission to the Regional Engineering College, Srinagar and also challenge the nominations made by the State Government of candidates to Regional Engineering colleges and other engineering

institutions outside the State. The State Government constituted a Selection Committee consisting of Shri T.R. Gupta, a Member of the State Public Service Commission as Chairman of the Committee and Shri A.R. Mir, Chief Engineer, Public Health Engineering, Kashmir, Professor Ansari, Professor of Mathematics, Regional Engineering College, Srinagar and Shri Mohd. Amin, Additional Secretary, General Department (Trainings Branch), Government of Jammu and Kashmir as its Members. On March 30, 1984 the State Government issued a public advertisement inviting applications from candidates for admission to the four-year Degree Course at the Regional Engineering College, Srinagar. The Entrance Examination for the Purpose of admission was to consist of a written test and a viva voce test. Out of 100 points, 85 points were allocated to the written test and the remaining 15 points were allocated to the viva voce test. The points reserved for the viva voce test were sub-divided into 8 points for 'Aptitude' and 7 points for 'General Knowledge and General Intelligence'. The written test was held in June 1984 and the viva voce test followed in July 1984. As in the case of admission to the Medical Colleges, tape recorders were employed for recording the oral interviews held during the viva voce test. On September 21, 1984 the State Government issued a Select List of 212 candidates. The State Government also made nominations of a number of candidates to Regional Engineering Colleges and engineering institutions outside the State.

And now these writ petitions. Learned counsel for the petitioners states that the several grounds on which the Medical Group of writ petitions were founded can constitute the basis of these writ petitions also and has adopted the submissions made by learned counsel in those cases. Those grounds have already been dealt with earlier by us and we need not reiterate our observations and findings in respect of them. Learned counsel has in addition taken certain further grounds in support of the present petitions. He points out that the Selection Committee took into account the behaviour, physical bearing and power of oral expression of the candidates during the viva voce test for the purpose of awarding points under the head "General Intelligence". In doing so, learned counsel urges, the Selection Committee gave importance to considerations which were not only vague but were wholly irrelevant for the selection of candidates to the Engineering Course. It is contended that the behaviour, physical bearing and oral expression of a candidate can hardly be relevant for assessing his intelligence and suitability for the Engineering Course. We are unable to agree. In our opinion, if a viva voce test is permissible for the purpose of adjudging the general intelligence of the candidates, there can be no doubt that the three components mentioned earlier would have some relevance. Presence of mind and expression can be considered as components of general intelligence. The presence of mind displayed by a candidate in answering a question is an index of general intelligence, and his power of oral expression is evidence of his ability to communicate intelligently. The third component, physical bearing, possesses a somewhat remote connection with general intelligence. But we may suppose that by physical bearing what is meant is the physical manner in which the candidate responds to the stress and tension experienced by him during the interview. It is a weak component, but even though tenuous it is not so unrelated to general intelligence that we should strike it down as unreasonable element in deciding on a candidate's suitability. We now enter the realm of admissions made by learned counsel for the State, who conceded that the selection of certain specified candidates could not be supported.

Five candidates, Abdul Rashid Dhobi, Roohi Firdous Adhami, Rais Ahmed Zargar, Shabir Durrani and Zahoor Ahmad Sheikh, were among those selected for admission to the first year B.E. Course in the Regional Engineering College at Srinagar for the session commencing in 1984-85. It is apparent that on the basis of their result during the selection examination they were not entitled to admission. A number of writ petitions were filed in the High Court of Jammu and Kashmir challenging the validity of the selection for admission to the aforesaid course. During the hearing of those writ petitions, counsel who appeared for the State Government and the Selection Committee, made a statement in Court conceding that the aforesaid five candidates were not entitled to admission because of their inferior merit and that an error had inadvertently been committed in including their names in the Select List. The High Court, by its judgment dated March 20, 1985 took the concession into account and set aside their selection. The five candidates have filed Special Leave Petition (Civil) No. 5197 of 85 in this Court, but after carefully examining the matter we find that the concession made by counsel for the State before the High Court was perfectly justified. Accordingly, the Special Leave Petition is liable to be dismissed. There are thus five vacancies on this account.

Five names were added to the Select List to fill up the aforesaid vacancies. They were candidates who had been nominated to Engineering Colleges outside the State, but had been unable to join there because they were late in doing so. In consequence they were admitted to the Regional Engineering College, Srinagar. These candidates are Abdul Mateen Sherwani, Parvez Ahmed, Rajinder Kaul, Shanker Singh and Sanjay Razdan. It is not clear whether these five candidates who have now MANOHAR been admitted to the Regional Engineering College, Srinagar would have been entitled to do so on the basis of their merit in the Select List. Their admission is liable to be quashed unless they have been selected by virtue of their merit in the Select List and but for the erroneous inclusion of the five candidates, Abdul Rashid Dhobi and the others, would have been included in the Select List. If one or more of such candidates does not hold a position of merit qualifying him or them for such selection, the candidates who are qualified by virtue of their position in order of merit are entitled to be admitted to the Regional Engineering College, Srinagar.

The Government of the State of Jammu and Kashmir nominated eight other candidates to seats in Engineering Colleges outside the State. They are Ghulam Hassan Mir, Sudhir Kumar Tukra, Sahab Ji Kachroo, Niraj Kumar Gupta, Mahmood Ahmed, Avneet Kumar, Mohd. Bashir Khan and Abdul Rehman. As Abdul Rehman declined the offer his place has been filled by Maqbool Hussain. There is no dispute that they could not in law be nominated by the State Government having regard to what was laid down by this Court in *Suman Gupta & Ors. (supra)* (as clarified by this Court by its Order dated September 22, 1983). Their nominations are liable to be quashed. Additionally, a candidate Arshad Hussain Wani was also nominated to a seat in an Engineering College outside the State. It is conceded by learned counsel for the State that the nomination of Arshad Hussain Wani cannot be supported. Accordingly that nomination is also liable to be quashed. In the circumstances the State Government must nominate candidates in place of the vacancies so arising in accordance with the law laid down by this Court on the basis of the merit list which was in force in the State on the date when the impugned nominations were made.

Eight candidates selected for admission to the Regional Engineering College, Srinagar did not join or having joined did not continue there. To fill the eight vacancies so arising eight other candidates were selected for admission to the Regional Engineering College, Srinagar. The inclusion of those names is also liable to be quashed unless the nominations have been made in accordance with law by virtue of their merit in the Select List and who, if the eight persons who were selected but did not join or continue in the Regional Engineering College, Srinagar had not been selected, would have been included in the Select List. If one or more of such candidates does not hold a position of merit qualifying him or them for such inclusion the candidates who are qualified by virtue of their position in order of merit are entitled to admission to the Regional Engineering College, Srinagar.

Ten candidates were nominated by the State Government to Engineering College outside the State on October 27, 1984, but all those ten nominations, as averred in the Counter Affidavit filed by the Chief Minister, have been cancelled by him pursuant to the law laid down by this Court in *Suman Gupta and Ors.*, (supra) (as clarified by this Court by its Order dated September 22, 1983).

Some candidates were nominated for admission to the Five Year Engineering Course of Studies. It is apparent that their selection was made arbitrarily and they could not be treated as constituting a separate category. We are informed that other candidates, while applying for admission to the Four Year Course of Studies, also applied for the Five Year Course of Studies and their claim was not considered. It is conceded by learned counsel for the State that the selection of the candidates to the Five Year Engineering Course of Studies cannot be supported. Accordingly the selection of candidates for admission to the Five Year Course of Studies in Engineering Colleges outside the State is liable to be quashed.

Finally the petitioners, Sanjeev Kumar Handoo, in Civil Writ Petitions Nos. 428-32 of 1985, does not press for relief inasmuch as he has been admitted to a Medical College, and therefore, the Writ Petition filed by him is liable to be dismissed as withdrawn.

P.S.S.

Petitions dismissed.