AJAY HASIA ETC. A

v.

KHALID MUJIB SEHRAVARDI & ORS. ETC.

November 13, 1980

[Y. V. CHANDRACHUD, C.J., P. N. BHAGWATI, V. R. KRISHNA IYER, B
S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

Admission to Engineering College—Jammu & Kashmir Regional Engineering College, Srinagar, registered as a society under the Jammu & Kashmir Registration of Societies Act, 1898—Whether a "State" under Article 12 of the Constitution and amenable to writ jurisdiction.

C

Viva voce test—Interview of each of the candidates lasting only two or three minutes asking formal questions relating to the candidates parentage and residence and without any relevance to the subject for which marks were allocated, whether arbitrary—Allocation of 1/3 of the total marks required for the qualifying examination for the viva voce—Whether bad, unreasonable and arbitrary—Whether prescribing different admission procedures for candidates belonging to the State of Jammu & Kashmir and candidates belonging to other States is violative of the Equality Clause under Article 14. D

Dismissing the writ petitions, the Court

HELD : (1). Having regard to the Memorandum of Association and the Rules of the Society, the respondent college is a State within the meaning of Article 12. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu & E
Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by the Society are also required to have the prior approval of the State F
and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without G
the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is incharge of general superintendence, direction and control of the affairs of the Society and of its H
income and property is also largely controlled by nominies of the State and the Central Governments. The State Government and by reason of the provision for approval, the Central Government also thus have full control of the work-

A ing of the Society and therefore, the Society is merely a projection of the State and the Central Governments. The voice is that of the State and the Central Governments. The Society is an instrumentality or the agency of the State and the Central Governments and it is an "authority" within the meaning of Article 12. If the Society is, an "authority" and, therefore, the "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. [99F-H, 100 K-F]

B (2) The expression "other authorities", in Article 12 must be given an interpretation where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. The Government may act through the instrumentality or agency of juridical persons to carry out its functions, since, with the advent of the welfare State its new task have increased manifold. [90B-D]

C It is, undoubtedly, true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government D which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. It is clear that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. E If the Government acting through its officers is subject to certain constitutional limitations, it must follow *a fortiorari* that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to override the Fundamental Rights by adopting the strata- F gem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality. [91B-F]

The Courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an G instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights. The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socio-economic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by H resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience to the Fundamental Rights. To use the

corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental Rights and not to override them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red-tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights, otherwise it would be the easiest thing for the government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV, Radio, Rail, Road and Telephones—in short every economic activity—and thereby cheat the people of India out of the Fundamental Rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. Courts cannot by a process of judicial construction allow the Fundamental Rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post-Menaka Gandhi era. It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the government and in effect an incarnation of the government," the court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the government and, therefore, not subject to the constitutional limitations. Therefore, where a corporation is an instrumentality or agency of the Government, it is an authority within the meaning of Article 12 and, hence, subject to the same basic obligation to obey the Fundamental Rights as the government. [91G-H, 92A-G]

R. D. Shetty v. *The International Airport Authority of India & Ors.*, [1979] 1 S.C.R. 1042 and *U.P. Warehousing Corporation* v. *Vijay Narain*, [1980] 3 S.C.C. 459, followed.

(3) The test for determining as to when a corporation can be said to be an instrumentality or agency of Government may be culled out from the judgment in the *International Airport Authority's* case. They are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. The relevant tests gathered from the decision in the *International Airport Authority's* case may be summarised as : (i) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long woy towards indicating that the Corporation is an instrumentality or agency of Government.' (ii) 'Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.' (iii) 'It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected.' (iv) 'Existence of 'deep and pervasive State control may afford an indication that the Corporation is a state

A agency or instrumentality.' (v) 'If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation an instrumentality or agency of Government.' (vi) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government." [96F-H, 97A-D]

B It is immaterial for this purpose whether the corporation is created *by* a statute or *under* a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The enquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, C 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in D a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12. [97F-H, 98A-B]

(4) Merely because a juristic entity may be an "authority" and, therefore, "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Articles 309, 310 and 311 which find a place E in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV and it does not extend to the other provisions of the Constitution and, hence, a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. [98B-D]

F *S. L. Aggarwal* v. *Hindustan Steel Ltd.*, [1970] 3 S.C.R. 365; *Sabhajit Tewary* v. *Union of India & Ors.*, [1975] 3, S.C.R. 616 and *Sukhdev Singh* v. *Bhagat Ram*, [1975] 3 S.C.R. 619, explained and distinguished.

(5) Article 14 must not be identified with 'the doctrine of classification. What Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification G which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions, namely, (1) that the classification is founded on an intelligible differentia and (2) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or H executive action, the impugned legislative or executive action, would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever, therefore, there is arbitrariness in State action whether it be of the

legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution. [100G, 102D-F] A

E. P. Royappa v. *State of Tamil Nadu,* [1974] 2 S.C.R. 348; ***Maneka Gandhi*** v. *Union of India,* [1978] 2 S.C.R. 621 and *R. D. Shetty* v. *The International Airport Authority of India, & Ors.,* [1979] 1 S.C.R. 1042, applied. B

(6) The procedure adopted by the respondent Society cannot be regarded as arbitrary merely because it refused to take into account the marks obtained by the candidates at the qualifying examination but chose to regulate the admissions by relying on the entrance test. The entrance test facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities, because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination. [103A-B, D-F] C

(7) The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. In the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification. [106C-E] D E

R. Chitra Lekha and Others v. *State of Mysore and Others,* [1964] 6 S.C.R. 368, followed. F

(8) Having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, is not free from the vice of arbitrariness. The allocation of as high a percentage as 33 1/3 of the total marks for oral interview suffers from the vice of arbitrariness. [107A-D] G

The court, however, to avoid immense hardship being caused to those students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed three semesters and taking into consideration the fact that even if the petitioners are ultimately found to be deserving of selection on the application of the proper test, it would not be possible to restore them to the position as if they were admitted for the academic year 1979-80, which has run out long since declined to set aside the selection made. The Court was, however, of the view that under the existing circumstances. H

A allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable. [107G-H, 108A-F]

A. Peeriakaruppan v. *State of Tamil Nadu*, [1971] 2 S.C.R. 430; *Miss Nishi Meghu* v. *State of Jammu & Kashmir & Ors.*, [1980] 3 S.C.R. p. 1253, applied.

(9) There can be no doubt that if the interview did not last for more than B two or three minutes on an average and the questions asked had no bearing on the factors required to be taken into account the oral interview test would be vitiated, because it would be impossible in such an interview to assess the merit of a candidate with reference to these factors. Here the absence of proper affidavit by the members of the committee to the contrary leads to the only conclusion that the selection made on the basis of such test must be held to be arbitrary. However, if the marks allocated for the oral interview do not exceed C 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness. Further it would be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were D the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee. [109A-B, D-E, F-H]

ORIGINAL JURISDICTION : Writ Petition Nos. 1304, 1262, 1119, 1118, 1574-75, 1373-74, 1244-45, 1230, 1494-97, 1566-67, 1143, E 1440, 1586, 1420-23, 1441-43, 1389, 1144, 1461, 1437-39, 1431, 1268, 1145, 1263 and 1331 of 1979.

(Under Article 32 of the Constitution)

Anil Dev Singh, Lalit Kumar Gupta, Subhash Sharma, C. P. Pandey and *S. K. Sabharwal* for the Petitioners in W.Ps. 1389, F 1437-39, 1262, 1497, 1586, 1230 and 1263 of 1979.

Y. S. Chitale, P. N. Duda, V. K. Pandita, R. Satish and *E. C. Agarwala* for the Petitioners in W.P. Nos. 1241-43, 1495-96, 1566-67, 1423, 1143-44,1118-19,1494, 1145 and 1331 of 1979.

S. K. Bisiaria for the Petitioner in W.P. 1461/79.

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Rishi Kesh and *B. Datta* for the Petitioner in W.Ps. 1373-74, 1304 and 1431/79.

Y. S. Chitale, D. N. Tiku, E. C. *Agarwala, M. Mudgal, Ashok Kaul* and *Vineet Kumar* for the Petitioners in W.Ps. 1244-45, 1420-22 and 1440/79.

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S. S. Khanduja for the Petitioners in W.Ps. 1268, 1574-75/79.

S. N. Kacker and *Altaf Ahmed* for the appearing Respondents.

The Judgment of the Court was delivered by

BHAGWATI, J. These writ petitions under Article 32 of the Constitution challenge the validity of the admissions made to the Regional Engineering College, Srinagar for the academic year 1979-80.

The Regional Engineering College, Srinagar (hereinafter referred to as the College) is one of the fifteen Engineering Colleges in the country sponsored by the Government of India. The College is established and its administration and management are carried on by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. The Memorandum of Association of the Society in clause 3 sets out the objects for which the Society is incorporated and they include amongst other things establishment of the college with a view to providing instruction and research in such branches of engineering and technology as the college may think fit and for the advancement of learning and knowledge in such branches. Vide sub-clause (i). The Society is empowered by clause 3 sub-clause (ii) of the Memorandum of Association to make rules for the conduct of the affairs of the Society and to add to, amend, vary or rescind them from time to time with the approval of the Government of Jammu and Kashmir State (hereinafter referred to as the State Government) and the Central Government. Clause 3 sub-clause (iii) of the Memorandum of Association confers power on the Society to acquire and hold property in the name of the State Government. Sub-clause (v) of clause 3 of the Memorandum of Association contemplates that monies for running the college would be provided by the State and Central Governments and sub-clause (vi) requires the Society to deposit all monies credited to its fund in such banks or to invest them in such manner as the Society may, with the approval of the State Government decide. The accounts of the Society as certified by a duly appointed auditor are mandatorily required by sub-clause (ix) of clause 3 of the Memorandum of Association to be forwarded annually to the State and Central Governments. Clause 6 of the Memorandum of Association empowers the State Government to appoint one or more persons to review the working and progress of the Society, or the college and to hold inquiries into the affairs thereof and to make a report and on receipt of any such report, the State Government has power, with the approval of the Central Government, to take such action and issue such directions as it may consider necessary in respect of any of the matters dealt with in the report and the Society or the College, as the case may be, is bound to comply with such directions. There is a provision made in clause 7 of the Memorandum of Association that in case the Society or the college is not functioning properly, the State Government will have the power to take over the

A administration and assets of the college with the prior approval of the Central Government. The founding members of the Society are enumerated in clause 9 of the Memorandum of Association and they are the Chairman to be appointed by the State Government with the approval of the Central Government, two representatives of the State Government, one representative of the Central Government, two repre-
B sentatives of the All India Council for Technical Education to be nominated by the northern Regional Committee, one representative of the University of Jammu and Kashmir, one non-official representative of each of the Punjab, Rajasthan, U.P. and Jammu and Kashmir States to be appointed by the respective Governments in consultation with the Central Government and the Principal who shall also be the
C the ex-officio Secretary.

The Rules of the Society are also important as they throw light on the nature of the Society. Rule 3 clause (i) reiterates the composition of the Society as set out in clause 9 of the Memorandum of Association and clause (ii) of that Rule provides that the State and
D the Central Governments may by mutual consultation at any time appoint any other person or persons to be member or members of the Society. Rule 6 vests the general superintendence, direction and control of the affairs and its income and property in the governing body of the Society which is called the Board of Governors. Rule 7 lays down the constitution of the Board of Governors by providing that
E it shall consist of the Chief Minister of the State Government as Chairman and the following as members : Three nominees of the State Government, three nominees of the Central Government, one representative of the All India Council for Technical Education, Vice-Chancellor of the University of Jammu and Kashmir, two industrialists/
F technologists in the region to be nominated by the State Government, one nominee of the Indian Institute of Technology in the region, one nominee of the University Grants Commission two representatives of the Faculty of the College and the Principal of the college as ex-officio member-Secretary. The State Government is empowered by rule 10 to remove any member of the Society other than a member represent-
G ing the State or Central Government from the membership of the Society with the approval of the Central Government. Clause (iv) of Rule 15 confers power on the Board to make bye-laws for admission of students to various courses and clause (xiv) of that Rule empowers the Board to delegate to a committee or to the Chairman such of its powers for the conduct of its business as it may deem fit, sub-
H ject to the condition that the action taken by the committee of the Chairman shall be reported for confirmation at the next meeting of the Board. Clause (xv) of Rule 15 provides that the Board shall

have power to consider and pass resolution on the annual report, the annual accounts and other financial estimates of the college, but the annual report and the annual accounts together with the resolution passed thereon are required to be submitted to the State and the Central Governments. The Society is empowered by Rule 24, clause (i) to alter, extend or abridge any purpose or purposes for which it is established, subject to the prior approval of the State and the Central Governments and clause (ii) of Rule 24 provides that the Rules may be altered by a Resolution passed by a majority of 2/3rd of the members present at the meeting of the Society, but such alteration shall be with the approval of the State and the Cenrtal Governments.

Pursuant to clause (iv) of Rule 15 of the Rules, the Board of Governors laid down the procedure for admission of students to various courses in the college by a Resolution dated 4th June, 1974. We are not directly concerned with the admission procedure laid down by this Resolution save and except that under this Resolution admissions to the candidates belonging to the State of Jammu and Kashmir were to be given on the basis of comparative merit to be determined by holding a written entrance test and a viva voce examination and the marks allocated for the written test in the subjects of English, Physics, Chemistry and Mathematics were 100, while for viva voce examination, the marks allocated were 50 divided as follows : (i) General Knowedge and Awareness—15; (ii) Broad understanding of Specific Phenomenon—15; (iii) Extra-curricular activities—10 and (iv) General Personality Trait—10, making up in the aggregate—50. The admissions to the college were governed by the procedure laid down in this Resolution until the academic year 1979-80, when the procedure was slightly changed and it was decided that out of 250 seats, which were available for admission, 50% of the seats shall be reserved for candidates belonging to the Jammu & Kashmir State and the remaining 50% for candidates belonging to other States including 15 seats reserved for certain categories of students. So far as the seats reserved for candidates belonging to States other than Jammu & Kashmir were concerned, certain reservations were made for candidates belonging to Scheduled Castes and Scheduled Tribes and sons and wards of defence personnel killed or disabled during hostilities and it was provided that "inter se merit will be determined on the basis of marks secured in the subjects of English, Physics, Chemistry and Mathematics only". The provision made with regard to seats reserved for candidates belonging to Jammu & Kashmir State was that "apart from 2 seats reserved for the sons and daughters of the permanent college employees, reservations shall be made in accordance with the

A Orders of Jammu and Kashmir Government for admsision to technical institutions and the seats shall be filled up on the basis of comparative merit as determined under the following scheme, both for seats to be filled on open merit and for reserved seats in each category separately; (1) marks for written test—100 and (2) marks for viva voce examination—50, marking up in the aggregate—150. It was not mentioned B expressly that the marks for the written test shall be in the subjects of Physics, English, Chemistry and Mathematics nor were the factors to be taken into account in the viva voce examination and the allocation of marks for such factors indicated specifically in the admission procedure laid down for the academic year 1979-80, but we were told and this was not disputed on behalf of the petitioners in C any of the writ petitions, that the subjects in which the written test was held were English, Physics, Chemistry and Mathematics and the marks at the viva voce examination were allocated under the same four heads and in the same manner as in the case of admissions under the procedure laid down in the Resolution dated 4th June, 1974.

D In or about April 1979, the college issued a notice inviting applications for admission to the first semester of the B.E. course in various branches of engineering and the notice set out the above admission procedure to be followed in granting admissions for the academic year 1979-80. The petitioners in the writ petitions before us applied for admission to the first semester of the B.E. course in one E or the other branch of engineering and they appeared in the written test which was held on 16th and 17th June, 1979. The petitioners were thereafter required to appear before a Committee consisting of three persons for viva voce test and they were interviewed by the Committee. The case of the petitioners was that the interview of each of them did not last for more than 2 or 3 minutes per candidate on F an average and the only questions which were asked to them were formal questions relating to their parentage and residence and hardly any question was asked which would be relevant to any of the four factors for which marks were allocated at the viva voce examination. When the admissions were announced, the petitioners found that though they had obtained very good marks in the qualifying examina- G tion, they had not been able to secure admission to the college because the marks awarded to them at the viva voce examination were very low and candidates who had much less marks at the qualifying examination, had succeeded in obtaining very high marks at the viva voce examination and thereby managed to secure admission in preference to the petitioners. The petitioners filed before us a chart show- H ing by way of comparison the marks obtained by the petitioners on the one hand and some of the successful candidates on the other at the qualifying examination, in the written test and at the viva voce exami-

nation. This chart shows beyond doubt that the successful candidates whose marks are given in the chart had obtained fairly low marks at the qualifying examination as also in the written test, but they had been able to score over the petitioners only on account of very high marks obtained by them at the viva voce examination. The petitioners feeling aggrieved by this mode of selection filed the present writ petitions challenging the validity of the admissions made to the college on various grounds. Some of these grounds stand concluded by the recent decision of this Court in *Miss Nishi Maghu* v. *State of Jammu & Kashmir & Ors.*(1) and they were therefore not pressed before us. Of the other grounds, only one was canvassed before us and we shall examine it in some detail.

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But before we proceed to consider the merits of this ground of challenge, we must dispose of a preliminary objection raised on behalf of the respondents against the maintainability of the writ petition. The respondents contended that the college is run by society which is not a corporation created by a statute but is a society registered under the Jammu & Kashmir Societies Registration Act, 1898 and it is therefore not an 'authority' within the meaning of Art. 12 of the Constitution and no writ petition can be maintained against it, nor can any complaint be made that it has acted arbitrarily in the matter of granting admissions and violated the equality clause of the Constitution. Now it is obvious that the only ground on which the validity of the admissions to the college can be assailed is that the society adopted an arbitrary procedure for selecting candidates for admission to the college and this resulted in denial of equality to the petitioners in the matter of admission violative of Art. 14 of the Constitution. It would appear that prima facie protection against infraction of Art. 14 is available only against the State and complaint of arbitrariness and denial of equality can therefore be sustained against the society only if the society can be shown to be State for the purpose of Art. 14. Now 'State' is defined in Art. 12 to include *inter alia* the Government of India and the Government of each of the States and all local or other authorities within the territory of India or under the control of the Government of India and the question therefore is whether the Society can be said to be 'State' within the meaning of this definition. Obviously the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local authority and therefore, it must come within the expression "other authorities" if it is to fall within the definition of 'State'. That immediately leads us to a consideration of the question as to what are the "other authorities" contemplated in the definition of 'State' in Art. 13.

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(1) [1980] 3 SCR p. 1253.

A While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of 'State' in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the Fundamental Rights enshrined in Part III of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the Fundamental Rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the

same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controllorate is the State and accountability for its actions to the community and to Parliament is of the State." It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a *fortiorari* that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to over-ride the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental Rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights. The constitutional philosophy of a democratic socialist republic requires

A B C D E F G H

A the Government to undertake a multitude of socio-economic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the B Government from implicit obedience to the Fundamental Rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental Rights and not to over-ride them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red-tapism and slow motion but by doing so, the Government cannot be allowed C to play truant with the basic human rights. Otherwise it would be the easiest thing for the government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail Road and Telephones—in short every economic activity—and thereby cheat the people of India out of the Fundamental Rights D guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a E process of judicial construction allow the Fundamental Rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post-Menaka Gandhi era. It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by F meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the government and in effect an incarnation of the government," the court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the government and therefore not subject to the G constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the government, it must be held to be an 'authority' within the meaning of Art. 12 and hence subject to the same basic obligation to obey the Fundamental Rights as the government.

H We may point out that this very question as to when a corporation can be regarded as an 'authority' within the meaning of Art. 12 arose for consideration before this Court in *R. D. Shetty* v. *The International*

Airport Authority of India & Ores.(1) There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J) this Court pointed out : A

> "So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated *inter alia* that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this." It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through instrumentality or agency of corporations should equally be subject to the same limitations."

B C D E F

The Court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed :

> "A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the Societies Registration Act 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation

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(1) [1979] 1 S.C.R. 1042.

A is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accord-
B ance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should
C be a certain amount of direct control exercised by Government and, if so what should be the nature of such control? Should the functions which the Corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the cor-
D poration is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the
E hands of a board of directors appointed by Government though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are tests to determine whether a corporation established by
F statute or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and
G those which are not."

The Court then proceeded to indicate the different tests, apart from ownership of the entire share capital :

".....if extensive and unusual financial assistance is
H given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of

public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government..... It may therefore be possible to say that where the financial assistance of the State is so much as to meet almost entire expendiutre of the corporation, it would afford some indication of the corporation being impregnated with governmental character ..... But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action—Vide *Sukhdev* v. *Bhagatram* [1975] 3 SCR 619 at 658. So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation's ties to the State."

"There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller : "The Constitutional Law of the Security State" (10 Stanford Law Review 620 at 664)."

"It may be noted that besides the so-called traditional functions, the modern state operates as multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in *Sukhdev* v. *Bhagatram* (supra) where the learned Judge said that "institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions."

The court however proceeded to point out with reference to the last functional test :

> ".....the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. [Mathew, J. *Sukhdev* v. *Bhagatram* (supra) at p. 652]. But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference."

These observations of the court in the *International Airport Authority's* case (supra) have our full approval.

The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the *International Airport Authority's* case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority's* case as follows :

(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long

way towards indicating that the corporation is an instrumentality or agency of Government." A

(2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected." B

(4) "Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality." C

(5) "If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government." D

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the *International Airpirt Authority's* case, be an E 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this court in the *U. P. Warehousing Corporation* v. *Vijay Narain*[1] and the observations made by the learned Judge in that case strongly reinforced the view we are taking F particularly in the matrix of our constitutional system.

We may point out that it is immaterial for this purpose whether the corporation is created *by* a statute or *under* a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the G juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article H 12 if it is an instrumentality or agency of the Government and that would

(1) [1980] 3 SCC 459.

A have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the B Government so as to come within the meaning of the expression "authority" in Article 12.

It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose C of Articles 309, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV : it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for D the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in *S. L. Aggarwal* v. *Hindustan Steel Ltd.*(1) and other cases involving the applicability of Article 311 have no relevance to the issue before us.

E The learned counsel appearing on behalf of the respondents Nos. 6 to 8, however, relied strongly on the decision in *Sabhajit Tewary* v. *Union of India & Ors*(2) and contended that this decision laid down in no uncertain terms that a society registered under the Societies Registration Act, 1860 can never be regarded as an "authority" within the meaning of Article 12. This being a decision given by a Bench of F five Judges of this Court is undoubtedly binding upon us but we do not think it lays down any such proposition as is contended on behalf of the respondents. The question which arose in this case was as to whether the Council of Scientific and Industrial Research which was juridically a society registered under the Societies Registration Act, G 1860 was an "authority" within the meaning of Article 12. The test which the Court applied for determining this question was the same as the one laid down in the *International Airport Authority's* case and approved by us, namely, whether the Council was an instrumentality or agency of the Government. The Court implicitly assented to the proposition that if the Council were an agency of the Government, it would H undoubtedly be an "authority". But, having regard to the various

(1) [1970] 3 S.C.R. 365.

(2) [1975] 3 S.C.R. 616.

features enumerated in the judgment, the Court held that the Council was not an agency of the Government and hence could not be regarded as an "authority". The Court did not rest its conclusion on the ground that the Council was a society registered under the Societies Registration Act, 1860, but proceeded to consider various other features of the Council for arriving at the conclusion that it was not an agency of the Government and therefore not an "authority". This would have been totally unnecessary if the view of the Court were that a society registered under the Societies Registration Act can never be an "authority" within the meaning of Article 12.

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The decision in *Sukhdev Singh* v. *Bhagat Ram* (1975) 3 SCR 619 was also strongly relied upon by the learned counsel for respondents Nos. 6 to 8 but we fail to see how this decision can assist the respondents in repelling the reasoning in the *International Airport Authority's* case or contending that a company or society formed *under* a statute can never come within the meaning of the expression "authority" in Article 12. That was a case relating to three juristic bodies, namely, the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation and the question was whether they were "State" under Article 12. Each of these three juristic bodies was a corporation created *by* a statute and the Court by majority held that they were "authorities" and therefore "State" within the meaning of Article 12. The Court in this case was not concerned with the question whether a company or society formed *under* a statute can be an "authority" or not and this decision does not therefore contain anything which might even remotely suggest that such a company or society can never be an "authority". On the contrary, the thrust of the logic in the decision, far from being restrictive, applies to all juristic persons alike, irrespective whether they are created *by* a statute or formed *under* a statute.

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It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an "authority" falling within the definition of "State" in Article 12. Is it an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu & Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the

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A Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State B Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Govermnents have even the power C to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge D of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominies of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the E Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in *Sukhdev Singh's* case (supra), the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or agency of the State and the Central Governments and it is an 'authority' F within the meaning of Art. 12.

If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it G is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would H be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things

that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa* v. *State of Tamil Nadu*(1) that this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said :

> "The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbled, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in *Royappa's* case and it was reaffirmed and elaborated by this Court in *Maneka Gandhi* v. *Union of India*(2) where this Court again speaking through one of us (Bhagwati, J.) observed :

> "Now the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the

(1) [1974] 2 S.C.R. 348.
(2) [1978] 2 S.C.R. 621.

A Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic
B concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits..... .....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-
C arbitrariness pervades Article 14 like a brooding omnipresence."

This was again reiterated by this Court in *International Airport Authority's* case (supra) at page 1042 of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is
D arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classi-
E fication is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of
F an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

We may now turn to the merits of the controversy between the
G parties. Though several contentions were urged in the writ petitions, challenging the validity of the admisisons made to the college, they were not all pressed before us and the principal contention that was advanced was that the society acted arbitrarily in the matter of granting of admissions, first by ignoring the marks obtained by the candidates at the qualifying examination; secondly by relying on *viva voce*
H examination as a test for determining comparative merit of the candidates; thirdly by allocating as many as 50 marks for the *viva voce* examination as against 100 marks allocated for the written test and

lastly, by holding superficial interviews lasting only 2 or 3 minutes on an average and asking questions which had no relevance to assessment of the suitability of the candidates with reference to the four factors required to be considered at the *viva voce* examination. Now so far as the challenge on the first count is concerned, we do not think it is at all well-founded. It is difficult to appreciate how a procedure for admission which does not take into account the marks obtained at the qualifying examination, but prefers to test the comparative merit of the candidates by insisting on an entrance examination can ever be said to be arbitrary. It has been pointed out in the counter affidavit filed by H. L. Chowdhury on behalf of the college that there are two universities on two different dates and the examination by the Board of Secondary Education for Jammu is also held on a different date than the examination by the Board of Secondary Education for Kashmir and the results of these examinations are not always declared before the admissions to the college can be decided. The College being the only institution for education in engineering courses in the State of Jammu & Kashmir has to cater to the needs of both the regions and it has, therefore, found it necessary and expedient to regulate admissions by holding an entrance test, so that the admission process may not be held up on account of late declaration of results of the qualifying examination in either of the two regions. The entrance test also facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorites, because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination. We would not, therefore, regard the procedure adopted by the society as arbitrary merely because it refused to take into account the marks obtained by the candidates at the qualifying examination, but chose to regulate the admissions by relying on the entrance test.

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

A for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence voilative of Art. 14. Now this criticism cannot be B said to be wholly unfounded and it reflects a point of view which has certainly some validity. We may quote the following passage from the book on "Public Administration in Theory and Practice" by M. P. Sharma which voices a far and balanced criticism of the oral interview method :

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

Ol Glenn Stahl points out in his book on "Public Personnel Administration" that there are three disadvantages from which the oral test H method suffers, namely, "(1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record on an oral test; and (3) public suspicion of the oral test as a channel

for the exertion of political influence" and we may add, other corrupt, nepotistic or extraneous considerations. The learned author then proceeds to add in a highly perceptive and critical passage :

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

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But, despite all this criticism, the oral interview method continues to be very much in vogue as a supplementary test for assessing the suitability of candidates wherever test of personal traits is considered essential. Its relevance as a test for determining suitability based on personal characteristics has been recognised in a number of decisions of this Court which are binding upon us. In the first case on the point which came before this Court, namely, *R. Chitra Lekha and Others* v. *State of Mysore and Others*(1) this Court pointed out :

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> "In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one..... ..... The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to quali-

F G H

(1) [1964] 6 S.C.R. 368.

A fied persons, this Court cannot obviously have any say in the matter.

and on this view refused to hold the oral interview test as irrelevant or arbitrary. It was also pointed out by this Court in *A. Peeriakaruppan* v. *State of Tamil Nadu & Ors* : (1)

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

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

F So far as the third ground of challenge is concerned, we do not think it can be dismissed as unsubstantial. The argument of the petitioners under this head of challenge was that even if oral interview may be regarded in principle as a valid test for selection of candidates for admission to a college, it was in the present case arbitrary and unreasonable since the marks allocated for the oral interview were very G much on the higher side as compared with the marks allocated for the written test. The marks allocated for the oral interview were 50 as against 100 allocated for the written test, so that the marks allocated for the oral interview came to 33 1/3% of the total number of marks taken into account for the purpose of making the selection. This, contended the petitioners, was beyond all reasonable proportion and H rendered the selection of the candidates arbitrary and violative of the equality clause of the Constitution. Now there can be no doubt that,

(1) [1971] 2 S.C.R. 430.

having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of arbitrariness. It may be pointed out that even in *Peeriakaruppan's case* (supra), where 75 marks out of a total of 275 marks were allocated for the oral interview, this Court observed that the marks allocated for interview were on the highside. This Court also observed in *Miss Nishi Maghu's case* (supra): "Reserving 50 marks for interview out of a total of 150... does seem excessive, especially when the time spent was not more than 4 minutes on each candidate". There can be no doubt that allocating 33 1/3 of the total marks for oral interview is plainly arbitrary and unreasonable. It is significant to note that even for selection of candidates for the Indian Administrative Service, the Indian Foreign Service and the Indian Police Service, where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview are 250 as against 1800 marks for the written examination, constituting only 12.2% of the total marks taken into consideration for the purpose of making the selection. We must, therefore, regard the allocation of as high a percentage as 33 1/3 of the total marks for the oral interview as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained. But we do not think we would be justified in the exercise of our discretion in setting aside the selections made for the academic year 1979-80 after the lapse of a period of about 18 months, since to do so would be to cause immense hardship to those students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed three semesters and, moreover, even if the petitioners are ultimately found to be deserving of selection on the application of the proper test, it would not be possible to restore them to the position as if they were admitted for the academic year 1979-80, which has run out long since. It is true there is an allegation of mala fides against the Committee which interviewed the candidates and we may concede that if this allegation were established, we might have been inclined to interfere with the selections even after the lapse of a period of 18 months, because the writ petitions were filed as early as October-November, 1979 and merely because the Court could not take-up the hearing of the writ petitions for such a long time should be no ground for denying relief to the petitioners, if they are otherwise so entitled. But we do not think that on the material placed before us we can

A sustain the allegation of mala fides against the Committee. It is true, and this is a rather disturbing feature of the present cases, that a large number of successful candidates succeeded in obtaining admission to the college by virtue of very high marks obtained by them at the viva voce examination tilted the balance in their favour, though the marks secured by them at the qualifying examination were much less than B those obtained by the petitioners and even in the written test, they had fared much worse than the petitioners. It is clear from the chart submitted to us on behalf of the petitioners that the marks awarded at the interview are by and large in inverse proportion to the marks obtained by the candidates at the qualifying examination and are also, in a large number of cases, not commensurate with the marks obtained in C the written test. The chart does create a strong suspicion in our mind that the marks awarded at the viva voce examination might have been manipulated with a view to favouring the candidates who ultimately came to be selected, but suspicion cannot take the place of proof and we cannot hold the plea of mala fides to be established. We need much more cogent material before we can hold that the Com- D mittee deliberately manipulated the marks at the viva voce examination with a view to favouring certain candidates as aganist the petitioners. We cannot, however, fail to mention that this is a matter which required to be looked into very carefully and not only the State Government, but also the Central Government which is equally responsible for the proper running of the college, must take care to see that proper E persons are appointed on the interviewing committees and there is no executive interference with their decision-making process. We may also caution the authorities that though, in the present case, for reasons which we have already given, we are not interfering with the selection for the academic year 1979-80, the selections made for the subsequent F academic years would run the risk of invalidation if such a high percentage of marks is allocated for the oral interview. We are of the view that, under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

G The petitioners, arguing under the last ground of challenge, urged that the oral interview as conducted in the present case was a mere pretence or farce, as it did not last for more than 2 or 3 minutes per candidate on an average and the questions which were asked were formal questions relating to parentage and residence of the candidate and hardly any question was asked which had relevance to assessment H of the suitability of the candidate with reference to any of the four factors required to be considered by the Committee. When the time spent on each candidate was not more 2 or 3 minutes on an average,

contended the petitioners, how could the suitability of the candidate be assessed on a consideration of the relevant factors by holding such an interview and how could the Committee possibly judge the merit of the candidate with reference to these factors when no questions bearing on these factors were asked to the candidate. Now there can be no doubt that if the interview did not take more than 2 or 3 minutes on an average and the questions asked had no bearing on the factors required to be taken into account, the oral interview test would be vitiated, because it would be impossible in such an interview to assess the merit of a candidate with reference to these factors. This allegation of the petitioners has been denied in the affidavit in reply filed by H. L. Chowdhury on behalf of the college and it has been stated that each candidate was interviewed for 6 to 8 minutes and "only the relevant questions on the aforesaid subjects were asked". If this statement of H. L. Chowdhury is correct, we cannot find much fault with the oral interview test held by the Committee. But we do not think we can act on this statement made by H. L. Chowdhury, because there is nothing to show that he was present at the interviews and none of the three Committee members has come forward to make an affidavit denying the allegation of the petitioners and stating that each candidate was interviewed for 6 to 8 minutes and only relevant questions were asked. We must therefore, proceed on the basis that the interview of each candidate did not last for more than 2 or 3 minutes on an average and hardly any questions were asked having bearing on the relevant factors. If that be so, the oral interview test must be held to be vitiated and the selection made on the basis of such test must be held to be arbitrary. We are, however, not inclined for reasons already given, to set aside the selection made for the academic year 1979-80, though we may caution the State Government and the Society that for the future academic years, selections may be made on the basis of observation made by us in this judgment lest they might run the risk of being struck down. We may point out that, in our opinion, if the marks allocated for the oral interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness. We think that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee.

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A We may point out that the State Government, the Society and the College have agreed before us that the best fifty students, out of those who applied for admission for the academic year 1979-80 and who have failed to secure admission so far, will be granted admission for the academic year 1981-82 and the seats allocated to them will be in addition to the normal intake of students in the College. We order
B accordingly.

Subject to the above direction, the writ petitions are dismissed, but having regard to the facts and circumstances of the present cases, we think that a fair order of costs would be that each party should bear and pay its own costs of the writ petitions.

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S. R. *Petitions dismissed.*