

Before S. S. Sandhawalia, C.J. & S. S. Sodhi, J.

AJAY KUMAR,—Petitioner.

versus

CHANDIGARH ADMINISTRATION and others,—Respondents.

Civil Writ Petition No. 3750 of 1982.

September 14, 1982.

*Constitution of India 1950—Articles 14 and 15—Admissions to State owned institutions for higher professional education—Prospectus laying down merit as the sole criteria for admission—Waiting list of candidates also prepared—Some seats remaining vacant till the last day of admission—Such vacancies filled by ‘spot selection’ from amongst the candidates present in the college premises on the last date of admission—Admission not offered to candidates on the waiting list—Such spot selection—Whether violative of Articles 14 and 15—Reservation of seats for children of the employees of the College—Such reservation—Whether invalid and offending against Article 14.*

*Held*, that State action has to be tested on the anvil of the rule of equality which is enjoined upon the State by the Constitution. The equality clauses enshrined primarily in Article 14 of the Constitution with its analogous facets of Articles 15 and 16 have now permeated so deeply into the selection of candidates in State-run-institutions for higher professional education that it would be rather wasteful to launch on a dissertation on first principles. It seems to be well settled that the equality of opportunity in admission into such institutions of higher learning is now a guaranteed right to the citizen students under the aforesaid Articles. This, in essence, postulates a right of consideration on merits of those who satisfy the prescribed test of eligibility and selection thereafter according to merit. The evaluation of merit in this context being on the basis of criteria, which is both objective and also well known to the person concerned in so far as it is incorporated either in the rules for admission, the relevant prospectus or otherwise made available for information. To come to brass tacks, this consideration on merits is usually measured by the yard-stick of marks obtained by the candidates in the specified examination. Equally significant herein is the judicially evolved rule of law that the State even in the exercise of its administrative power cannot act arbitrarily. Being the State it is obliged to act in a fair, reasonable and equitable manner which in the absence of any binding rules to the contrary implies clearly the preference on basis of merit alone in this context. This postulate of acting fairly is a basic one for the fundamental right of equality and the prohibition against discrimination. The principle of selection on merit to State run institutions for higher professional education has come to be well entrenched. Sharply in contrast thereto the case in hand puts in clear focus the fact that the twin vice of discrimination and arbitrariness is inherent in what is loosely labelled as ‘spot selection’. Inevitably this would vest a wholly unfettered power on the man on spot on to determine the locale, the time and the

modus of selection, if any. It involves an unguided discretion in the selecting authority in making its choice. Equally, this tends to violate the right of persons who satisfy the test of eligibility to be considered for selection and contravenes the constitutional mandate of measuring of equals with the same yard stick. Such a procedure may tilt the balance on the mere fortuitous circumstances of happening to be in a place unspecified earlier and at a time undetermined previously. Surely such a method (if at all it can be given so high sounding a name) is a far cry from the equality rule as laid in the Constitution and as elaborated and expounded by authoritative judicial precedent. The core of the principle of equality enshrined in the fundamental right under Article 14 and the judicial bar against arbitrary action cannot be out-flanked by instant whimsicality masquerading in the cloak of so called 'spot selection'. It must, therefore, be concluded that in cases where the equality rule is attracted in the context of admissions to the State owned institutions for higher professional education, any empirical 'spot selection' without a binding sanction has inherent in it the seeds of inequality, arbitrariness and discrimination and is, therefore, violative of Article 14. (Paras 10, 11, 13 and 16).

Ashok Kumar Pani vs. The State and others, A.I.R. 1963 Orissa 173.

Prasanna Dinkar Sohale etc. vs. The Director-in-charge Laxminarayan Institute of Technology, Nagpur and other, A.I.R. 1982 Bombay 176.

**DISSENTED FROM:**

*Held*, that in order to make a justifiable classification there must be some special features which distinguish that class from the rest. In the present case there is no such intelligible differentia while classifying the children of the Engineering College employees. The reservations are, indeed, not shown to have been even remotely sanctified by any statutory provision or within any authoritative instruction. There, thus, seems to be no option but to strike down this reservation as well. (Para 25).

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—*

- (i) call for the record from the respondents and after perusal of the same issue an appropriate writ, order or direction especially in the nature of mandamus commanding the respondent No. 2 to give admission to the petitioner to B.Sc. Engineering Courses and if need be set-aside the admission of the candidates below in merit to the petitioner;
- (ii) issue writ in the nature of prohibition directing the respondent No. 2 not to admit any candidate below in merit to the petitioner to the Engineering Course;
- (iii) issue an appropriate writ, order or direction directing the respondents to admit the petitioner provisionally till the decision of this writ petition, so that the petitioner may not lack behind in the studies of different subjects;

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- (iv) award the cost of the petition to the petitioner;
- (v) grant any other relief, which this Hon'ble Court may deem fit under the circumstances of the case;
- (vi) dispense with the filing of certified copies of Annexures P-1 to P-3 on such terms and conditions which this Hon'ble Court may deem fit and proper in the circumstances of the present case.
- (vii) dispense with the issuance of advance notices upon the respondents as required under the amended High Court Rules and Orders.

Ashwani Kumar Chopra, Advocate, for the Petitioner.

H. S. Brar, Advocate with B. B. Aggarwal & Kanwaljit Singh, for respondents 1 and 2.

Anand Swarup, Senior Advocate with Sanjiv Pabbi, for respondent No. 3.

**JUDGMENT**

*S. S. Sandhawalia, C.J.*

1. The validity of what is euphemistically called a "spot selection" for admissions to State owned institutions for higher professional education has come to be the spinal issue in this set of sixteen connected writ petitions.

2. The issues arising herein being admittedly identical the factual matrix may be aptly picked from the averments in *Ajay Kumar v. Chandigarh Administration etc.*, C.W.P. No. 3750 of 1982. The Punjab Engineering College is a prestigious institution of considerable standing imparting engineering education in the Northern region. It offers courses of study in seven engineering disciplines. It is wholly State owned and State managed. For the academic session of 1982-83, 275 seats were offered for admission by the Punjab Engineering College prospectus (Session 1982-83), which were allocated as follows :—

“(i) Scheduled Castes/Scheduled Tribes	...	65
(ii) Pre-Engg. candidates (General Pool)	...	79
(iii) B.Sc. candidates (General Pool)	...	9
(iv) B.Sc. candidates qualifying from Colleges/ Institutions located in the Union Territory.	...	13
(v) Pre-Engg./B.Sc. Part-I candidates qualify- ing from Institutions/Colleges located in the U.T., Chandigarh.	...	119

275”

Apart from the above, 27 foreign eligible candidates were to be admitted as nominees of the Government of India.

3. Ajay Kumar, petitioner, successfully completed his Pre-Engineering Examination securing 436 marks out of maximum of 650 and the percentage of his marks for the merit list on the basis of marks for the four elective subjects of English, Physics, Chemistry and Mathematics, worked out to 68.67 *per cent*. In response to a notice published in 'The Tribune' dated June 3, 1982 (annexure P/2) by respondent No. 2, the petitioner duly applied for admission on the prescribed form. Later, another notice was published in 'The Tribune' on June 28, 1982 (annexure P/3),—*vide* which the candidates from the category in which the petitioner fell, and who obtained marks above 68 *per cent* were called for interview on July 2, 1982. Admittedly, this interview was solely for the purpose of verification of the original certificates and the candidates were to be considered for admission strictly according to merit. The petitioner duly appeared and on that date merit lists were drawn up and in accordance therewith, 119 seats for the Chandigarh Pre-Engineering candidates as also the 79 seats for Pre-Engineering candidates of the General Pool, were duly filled. In accordance with the prescription in the prospectus, a waiting list of 41 for the category of Chandigarh Pre-Engineering and a waiting list of 59 for the Pre-Engineering candidates of the General Pool were prepared. The name of the petitioner was kept on the waiting list and he was assured that in case of any vague vacancy arising in future, he shall be called in to report for submitting the fee etc. and would be given admission. It is the petitioner's claim that he kept on enquiring from respondent No. 2, but was told that no more seats were available and thereafter he was never called or intimated after July 2, 1982.

4. It is then the categorical stand that respondent No. 3, Sanjay Kumar Gupta, who had obtained a much lower percentage of 63.3 was subsequently given admission alongwith some others who had also got lesser marks than the petitioner. Despite his best efforts, the petitioner could not obtain the particulars of the other candidates, as these were a matter of record to which he had no access.

5. It is the claim of the writ petitioner that no further candidates could be admitted by respondent No. 2 without exhausting the waiting list prepared according to merit. The admission of respondent No. 3 and all other candidates in violation of this mandate is,

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therefore, assailed as illegal, arbitrary and discriminatory and thus hit by Article 14 of the Constitution of India.

6. In the return filed by the Principal of the Punjab Engineering College—respondent No. 2, the broad factual position is not disputed and paragraphs 1 to 5 of the writ petition have in terms been admitted. It has, however, been elaborated that subsequent to July 2, 1982, five vacancies arose in respect of Chandigarh Pre-Engineering seats and telegrams were sent to 14 candidates in order of merit to fill up these seats on July 28, 1982 to report on July 30, 1982 at 10 A.M. in the following terms:—

“Reference your application B.Sc. Engineering admission. (.)  
Few seats in Metallurgy/Aero available (.) Report for  
interview on 30th July at 10 A.M. with fee (.) Reply  
telegraphically before 29th July (.)”

Similarly, four vacancies arose with regard to the seats in the General Pool and similar letters and telegrams were sent to only 10 persons on the waiting list. It is the respondents' stand that on August 2, 1982, which is said to be the last date for admission, only one candidate each turned up from the candidates who were informed, out of the waiting list. Thus four vacancies in the Chandigarh Pre-Engineering quota and three vacancies in the General Pool Pre-Engineering quota still remained vacant and on that very date one more General Pool candidate withdrew his candidature. Consequently, after 4.30 P.M. on August 2, 1982, the Officer Incharge of admissions made a report (annexure R/2) to the Principal that eight seats were available for admission and some applicants who were earlier not even called for interview had been enquiring about their chances of admission and were already there, were earnestly requesting that they be admitted. On the basis of this report, the Principal later passed an order, the relevant part thereof is as under :—

- (i) Against 4 vacancies of Pre-Engineering, Chandigarh, students roll call may be taken of all Chandigarh Pre-Engineering applicants present and admissions, offered on the basis of their *inter se* merit. In case still some Chandigarh seats remain vacant they be offered to the General Pool applicants present on the basis of their **inter-se-merit**.

- (ii) Against the 4 vacancies of General Pool candidates, these be offered to the General Pool Pre-Engineering candidates present on the basis of their inter-se-merit. In case some seats of this category still remain vacant the Chandigarh Pre-Engineering applicants present be offered the same on the basis of their inter-se-merit.

However, before taking action as advised above every effort should be made to contact all applicants present within the College premises to ensure that no applicant who is present and is higher in merit is ignored."

It is further the case that in pursuance of this order, later, on that very day of August 2, 1982, it was found that only seven candidates of Chandigarh Pre-Engineering category were present at 5.15 P.M. including Sanjay Kumar Gupta, respondent No. 3, who were immediately granted admission. In the category of General Pool, only one candidate, Manoj Gupta was present who was similarly admitted. It is then averred that later, one Shri Ashok Kumar who had filed a civil suit made a representation to the Chandigarh Administration and under their instructions, he was granted provisional admission to the to the College on August 10, 1982. Specifically with regard to the petitioner the plea of the respondent is as under :—

".....Had the petitioner been present on the 2nd August, 1982, according to the procedure adopted by the respondent No. 2 as indicated above, he would have certainly been considered for admission in preference to respondent No. 3 by virtue of their higher merit in the 4-relevant subjects....."

On the aforesaid ground, it is claimed on behalf of the respondents that the admissions on August 2, 1982 have been made on a fair and rational basis and do not suffer from any illegality.

7. On behalf of the petitioner, a detailed replication has been filed attaching there to annexure P/5 to P/7, from the records of the Engineering College itself. At the fag end of the case, a reply to this replication was also put on record on behalf of the respondents. It is unnecessary to advert in any detail to this part of the pleadings because therein, innuendos have been raised on behalf of

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the petitioner which stand denied on behalf of the respondents. We would therefore, prefer to ignore the controversial part of these averments in view of the sound rule that the writ jurisdiction is not the proper forum for entering the quagmire of tangled and disputed facts. This has been recently reiterated by the Full Bench in *Guru Nanak University v. Dr (Mrs.) Iqbal Kaur Sandhu and others* (1).

“.....It needs no great erudition to see that this jurisdiction is normally confined to facts alleged and admitted on affidavits or those not seriously traversed on the record. As is well known, it is an extraordinary remedy resorted to when the basic factual position is not in dispute. It has to be borne in mind that the writ jurisdiction is not and cannot be made a substitute for a regular trial by way of a suit for determination of contentious matters in which the parties are diametrically opposed on material facts. This indeed is a reason for declining to exercise the discretionary writ jurisdiction in cases where intricate and disputed questions of facts are raised unless of course as a very exceptional measure the writ Court itself proceeds to record evidence and then arrives at a finding thereon.....”

We would, therefore, proceed to consider the matter on more or less admitted and established facts and decide the issue on larger principle and enduring considerations.

8. It is manifest from the aforesaid resume of the pleadings that the core of the respondents' stand herein is that on August 2, 1982 long after 4.30 p.m., a proposal emanated from the office of respondent No. 12 that the resultant vacancies be filled up from amongst the candidates who fortuitously happened to be present in the college premises and who earlier had not even been called for interview. On this tenuous basis, the Principal of the respondent-College, who happened to be on the spot made, what may equally be termed a 'spot-decision' to make selections accordingly. The whole case of the respondents herein is that he was entitled to resort to what is called a 'spot selection' and the same having been done in apparent good faith, the matter is now beyond challenge.

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(1) AIR 1976 Pb. & Hy. 69.

9. Now this stance at the very threshold, raises the somewhat significant question—whether in the context of State institutions for imparting higher professional education, the empirical process of a 'spot-selection' can be resorted to ?

10. What deserves highlighting herein is that the respondent-Engineering College is a State owned and a state run institution. What is, therefore, under challenge herein is virtually State action which has to be tested on the anvil of the rule of equality which is enjoined upon the State by the Constitution. Now it appears to me that the equality clauses enshrined primarily in Article 14 of the Constitution with its analogous facets of Articles 15 and 16 have now permeated so deeply into the selection of candidates in State-run institutions for higher professional education that it would be rather wasteful to launch on a dissertation on first principle. It seems to be well-settled that the equality of opportunity in admission into such institutions of higher learning is now a **guaranteed right to the citizen-students under the aforesaid Articles**. This, in essence, postulates right of consideration on merits of those who satisfy the prescribed test of eligibility and selection thereafter according to merit. The evaluation of merit in this context being on the basis of a criteria, which is both objective and also well-known to the persons concerned in so far it is incorporated either in the rules for admission, the relevant prospectus or otherwise made available for information. To come to brass tacks, this consideration on merits is usually measured by the yard-stick of marks obtained by the candidates in the specified examination.

11. Equally significant herein is the judicially evolved rule of law that the State even in the exercise of its administrative power cannot act arbitrarily. Being the State it is obliged to act in a fair, reasonable and equitable manner which in the absence of any binding rules to the contrary implies clearly the preference on basis of merit alone in this context. This postulate of acting fairly, (or to put it negatively, of avoiding arbitrariness) is a basic one for the fundamental right of equality, and the prohibition against discrimination.

12. Though the matter appears to be plain on principle, it is more than amply covered by a long catena of precedent of the final Court itself. It is unnecessary to multiply authorities and it suffices to quote the somewhat recent precedent directly covering



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the issue, in *Dr. Jagdish Saran and others v. Union of India and others*, (2), in the following words :—

“If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like a medicine is a nation’s human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social in consequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country’s development in the vital areas of professional expertise.....”

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“Coming to brass tacks, deviation from equal marks will meet with approval only if the essential conditions set out above are fulfilled.....”

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“We are aware that measurement of merit is difficult and the methods now in vogue have so much to be desired, that swearing by marks as measure of merit may even be stark superstition. But, for want of surer techniques, we have to make—do with entrance tests, and at any rate, save in clear cases of perversity or irrationality this is ordinarily out of bounds for courts.”

13. The aforesaid view has then been reiterated in *State of Madhya Pradesh v. Nivedita Jain*, (3). A perusal of this judgment

(2) AIR 1980 S.C. 820.

(3) AIR 1981 S.C. 2045.

would indicate that their Lordships examined with meticulous care the rule of merit and its application to selection of students to the State Medical Colleges in the Madhya Pradesh. It seems to be manifest that even by binding precedent now the principle of selection on merit to State-run institutions for higher professional education has come to be well entrenched. Sharply in contrast thereto the case in hand puts in clear focus the fact that the twin vice of discrimination and arbitrariness is inherent in what is loosely labelled as 'spot selection'. Inevitably this would vest a wholly unfettered power on the man on spot to determine the locale, the time, and the modus of selection, if any. It involves an unguided discretion in the selecting authority in making its choice. Equally this tends to violate the right of persons who satisfy the test of eligibility to be considered for selection and contravenes the constitutional mandate of measuring of equals with the same yardstick. As is evident in the present case such a procedure may tilt the balance on the mere fortuitous circumstances of happening to be in a place unspecified earlier and at a time un-determined previously. Surely such a method (if at all it can be given so high sounding a name) is a far cry from the equality rule as laid in the Constitution and as elaborated and expounded by authoritative judicial precedent. It appears to me that the core of the principle of equality enshrined as a fundamental right under Article 14 and the judicial bar against arbitrary action cannot be out-flanked by instant whimsicality masquerading in the cloak of so called 'spot selection'.

14. The basic reliance on behalf of the respondents for buttressing the alleged validity of 'spot selection' is on *Ashok Kumar Pani v. The State and others*, (4). Undoubtedly this case would lend a handle to the respondents' stand. However, it appears that much water has flown down the bridges since the observations therein were made. A perusal of the judgment would indicate that it proceeds solely on the twin premise that the students had no right to get admission in any of the State Medical Colleges and it was a matter wholly in the discretion of the authorities concerned. On this premise it was held that the discretion of the respective principals of different colleges could not be challenged under Article 226 of the Constitution. It seems to be plain that the very basis of the said judgment now stands eroded by the subsequent precedents of the final Court culminating, as has already been quoted above,

(4) AIR 1963 Orissa 173.

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in *Dr. Jagdish Saran and Nivedita Jain's cases* (supra). with the greatest respect it appears to me that the ratio in *Ashok Kumar Pani's case* (supra) cannot hold the field and is no longer good law. Inevitably I must record a dissent therefrom.

15. What has been said above applies equally, if not with greater force, to the earlier judgments in *Ramchandra Vishnu v. State of M.P.* (5) and *Gokul Prasad v. M. M. Sohani Petul.* (6), which were relied upon in *Ashok Kumar Pani's case* (supra). In these authorities the view taken was that the provisions governing the admission into Medical Colleges did not have statutory force and, therefore, the writ of *certiorari* and *mandamus* was out of place in this context. Plainly this approach cannot now possibly hold the field. Reference in this context must also be made to the Division Bench judgment in *Prasanna Dinkar Sohale etc. v. The Director-in-charge Laxminarayan Institute of Technology, Nagpur and others*, (7). In the said case even though the spot selections to the Laxminarayan Institute of Technology, Nagpur were struck down on procedural irregularities, however, a cryptic observation was made that there would not be any illegality in the 'spot admission' as such. It seems to be plain that the constitutional validity of such a procedure was not even remotely canvassed. Since the spot selection was otherwise held invalid the attention of the learned Judges was obviously not drawn to its intrinsic nature. There is not the least discussion of principle and precedent on this point. If *Prasanna's case* is deemed to be any warrant for the proposition that "spot selections" in the present context are constitutional then for the reasons recorded earlier I would respectfully dissent therefrom.

16. It must, therefore, be concluded that in cases where the equality rule is attracted in the context of admissions to the State-owned institutions for higher professional education, any empirical 'spot selection' without a binding sanction (it is even doubtful if this can be possible) has inherent in it the seeds of inequality, arbitrariness, and discrimination, and is, therefore, violative of Article 14.

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(5) AIR 1961 M.P. 247.

(6) AIR 1962 M.P. 126.

(7) AIR 1982 Bom 176.

17. Proceeding now from the general to the particular it is equally plain that in the present case the alleged 'spot selection' is in head long conflict with the rules for admission as contained in the Punjab Engineering College Prospectus (Session 1982-83) which are admitted to be binding by the respondents themselves. This in terms provides for the basic rules of selection, and equally for the filling up of any vacancies which may arise subsequent to this selection. The rule of merit has been spelt out in unequivocal terms at page 23 of the said prospectus as under :—

“(iii) The admission to candidates of the different categories is made on the basis of *respective merit lists*”.

The procedural aspect has been further elaborated in para 5 at page 27 as follows :—

“5. Candidates eligible for admission will be called for interview according to their merit either by letter or through press notification and will be required to present themselves before the selection committee on some particular dates. They must bring with them the University certificates — Matriculation/Higher Secondary, Pre-Engineering, B.Sc. and other certificates whose copies have been appended to the application etc., in original.”

It would be thus plain that apart from the constitutional guarantee of equality, and the judicial bar against arbitrariness, the particular rules themselves specify selection on the basis of merit. It is the admitted position that this was to be determined on the basis of marks for the four elective subjects—English, Physics, Chemistry and Mathematics and there is not the least factual dispute on this point.

18. Not only at the stage of original selection but equally at the later stage of any subsequent vacancies the rule of merit and the procedure therefore stand well prescribed at page 27 Note (ii). It is specified as under :—

“Note (ii) In the case of candidates who do not appear for interview on due date or do not deposit the college dues immediately after interview their candidature will be automatically cancelled and vacancies so caused may be

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offered to *candidates next in order of merit*. No correspondence or appeals in this connection will be entertained.” and again at page 23 as under :—

- (ii) The allotment of branch at the time of admission will be made on the basis of the seats available in particular branch at that time and the order of preference for any particular branch mentioned by the candidates in his application form. However, if seats fall vacant due to some of the students leaving the college before the last date of admission prescribed by the University the admitted students will be shifted upward as per their order of preference mentioned in the application form and also branch made available by the leaving/shifted candidates. *The resulting vacancies of various branches will then be filled by the fresh candidates chosen from amongst the waiting list as per merit and seats available in a particular branch”.*

19. It would thus appear that even as regards the vacancies arising subsequent to the selection with which we are primarily concerned the admission rules are specific and categorical. The resultant vacancies have to be filled from amongst the waiting lists enjoined by the prospectus and the rule of merit, even for filling these, has been made paramount. By necessary implication, therefore, the binding rules contained in the prospectus bar any selection contrary to its mandates.

20. Now there seems to be no manner of doubt that the impugned ‘spot selection’ which has been resorted to is in terms violative of each one of the mandates noticed above in the prospectus. The rule of merit and the consideration of all eligible candidates seems to have been clearly given a go by. It is not in dispute that in the present case not only the waiting lists were duly prepared but as many as 41 candidates were placed in the category of Chandigarh Pre-engineering Course and 59 candidates for the Pre-engineering candidates of the general pool. It is the case of the respondents themselves that all of these candidates on the waiting lists were not even attempted to be informed about the resultant vacancies. Far from these lists being exhausted it is the admitted position that only a few therefrom were subsequently offered admission. Instead the wholly anachronistic procedure of selection

from amongst the accidental presence of students on the 2nd of August, 1982 at 5.15 P.M. in the College premises was resorted to in which hardly one or two of the students from the waiting lists found place and that too not in their order of merit. It follows inexorably that the spot selection herein being plainly in contravention of the admittedly binding rules of admission contained in the prospectus has to be struck down on this score as well.

21. Assuming for a moment (without conceding) that in a remote exigency, a spot selection may perhaps be permissible, it would appear that the procedural infirmities and irregularities in the present case equally vitiate the same. This aspect has been well elaborated in *Prasanna Dinkar Sohale's case* (supra) and it is wasteful to traverse the same ground over again. We are in respectful agreement with the view therein that even on the assumption of the validity of spot selection it would be vitiated by irregularities of procedure resulting in discrimination amongst student candidates. In the present case, what prominently catches the eye is the fact of the total lack of publication, firstly, with regard even to the decision that a spot selection will be made and secondly, of the place and time where it would be so done. From the respondent's own stand and from the intrinsic evidence in annexure R. 2, it is plain that it was after 4.30 P.M. on the 2nd of August, 1982, that for the first time a proposal was mooted for making a spot selection. The relevant part of annexure R. 2 is as under :—

“From the above table it appears that at 4.30 P.M. today, the 2nd of August, 1982, which is the closing date for admissions, the College has still four seats available in general pool and four seats in Chandigarh students quota which can be offered to the candidates.”

The note of the officer-in-charge admission was thus prepared after 4.30 P.M. itself and then forwarded to the Principal, who later considered it and recorded the order for making the spot selection by 5.15 P.M. On that very date, the selection is said to have been completed forthwith by finding 8 candidates present in the College premises. It is thus evident that to the very last no one except the Officer-in-Charge of admission and the Principal could have the least inkling that any spot selection was to be resorted to and if so where and when. Indeed Mr. Agnihotri for the respondents very

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fairly conceded that herein there had been no publication whatsoever therefor. That being so it is plain that all the eligible students on the waiting lists had no knowledge whatsoever of the intended spot selection or the necessity of coming present at 5.15 P.M. at the College premises on the 2nd August, 1982. The Full Bench in *Daljit Singh Minhas and others v. The State of Punjab and others*, (8), in the context of Article 16, had held as follows :—

“Having held as above, one must sound a note of caution that it is not to be understood that appointments to public office are to be made in a cloistered manner. What is clearly implied is this that the mode and manner of giving adequate publicity for the posts to be filled either to the public at large or to the class or source to which recruitment may be confined, has necessarily to be left to the judicious discretion of the authority concerned. Probably, in the majority of the cases public advertisement may still be the best mode of reaching out to the candidate concerned.....”

What has been said in the context of selections and appointments to public office under Article 16 seems to me as equally applicable under Article 14 with regard to selections for seats in State-owned institutions for higher professional education.

(22) Again though it is the admitted position that there were 41 candidates on the waiting lists for the Chandigarh Pre-Engineering category and 59 candidates in the general pool category yet intimation by telegrams was given to only 14 candidates and 10 candidates, respectively thereon. Significantly again the telegrams were despatched only on the 28th of July, itself asking the candidates to report on the 30th of July and to intimate telegraphically before the 29th itself. The respondents are silent even about the receipt of these telegrams by the respective candidates or the response thereto. That the time specified for the response was too short and the possibilities of non-receipt thereof could exist is writ large in the matter and does not call for elaboration. Again these telegrams did not even remotely talk of any spot selection on the 30th nor is it the case of the respondents that all these candidates were subsequently intimated to remain present, three days later, on the 2nd of August at a particular time. It is the common case that

no attempt even was made to intimate all the candidates on the waiting merit lists prepared in accordance with the mandate of the prospectus. The absence of publication is further manifest from the fact that a paltry 8 students were present at 5.15 P.M. at the material time when it is the common case that for the engineering discipline hundreds of them had applied and had been disappointed because of the paucity of seats and being lower down in merit than those originally selected on the 2nd of July, 1982. It is the case of the respondents that resultant vacancies started arising after the completion of the selection on the date aforesaid and no explanation is forthcoming as to why these were not duly filled seriatim from the waiting list in different categories till more than two to three weeks thereafter. It appears to us on an over-all appraisal that the alleged situation of urgency was one of the respondent's own creation. Even in such a situation, it is imperative that rules and principles governing the selection of candidates for admission must take care to ensure that the criteria of merit is not deviated from even in the not uncommon situation as allegedly arose in the present case of the seats being left vacant at the end of the last date for admission.

23. Equally, it is the admitted position that respondent No. 3, who has been granted admission ranks far below in merit than many of the petitioners. Nor is it in doubt that some of the other candidates similarly admitted are also lower in merit than many of the petitioners. Indeed in this context the respondents virtually admit the claim by averring in Ajay Kumar's case that had the petitioner been present on the 2nd of August, 1982, he would certainly have been considered for admission in preference to respondent No. 3 by virtue of his higher merit. It is thus conceded that but for the fortuitous circumstance of their absence from the College premises on the 2nd of August at 5.15 P.M., some of the petitioners have a clear right of admission in preference to those admitted at that time.

24. It is plain from the above that even the procedure followed herein bristles with such irregularities and illegalities so as to result in obvious discrimination and consequently vitiates the selection on and after the 2nd August, 1982.

25. An additional issue which is equally meritorious again calls for pointed notice in CWP 3669/1982 *Sanjay Gulati v.*



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*Chandigarh Admn. & ors.* Therein in para No. 15, it is averred as follows :—

“That the candidates below in order of merit to the petitioner should not have been given admission but have been accommodated at the last moment with *mala fide* intention of the authorities and for giving undue favour and preference and for extraneous consideration. Not only this there was no seat reserved for candidates/sons and daughters of the teaching staff of the Engineering College in the prospectus but they have admitted about 5/6 candidates also against over and above the categories mentioned in the prospectus. The admission of all these candidates is liable to be struck down.

The reply of the respondents thereto is as under :—

“The allegations made in this para are denied as being incorrect. Admissions have been made in a rational, just and fair manner as indicated earlier.

Admission have been given to seven children of the employees of Punjab Engineering College, Chandigarh on the basis of their *inter-se-merit* on 2nd of August, 1982. Since these seats were Created by the Chandigarh Administration over and above the provisions of the prospectus for the sessions 1982-83 namely, 275, no right of the petitioner has been infringed by these admissions in any manner.”

From the above it is the admitted position that after the 2nd of August, 1982, seven seats have been filled from the alleged cloistered category of the children of the employees of the Punjab Engineering College. No such reservation admittedly exists either in any statutory provision nor in the categorisation of seats in the prospectus itself. The respondents are cryptically silent about the source of authority for first making this reservation and then filling up the seats on the 2nd of August, 1982. We are of the view that this issue is so well covered by the judgment in *Prasanna Dinkar Sohale's case* above that it is unnecessary to elaborate the matter. Therein, a similar reservation of seats in favour of the wards of the University employees was under challenge. This

indeed had even the sanction of the Vice-Chancellor under section 11(4) of the Nagpur University Act, 1974 and allegedly covered by sections 4 and 75 thereof. Nevertheless this reservation was struck down by the Division Bench after an exhaustive discussion on principle and the precedents of the final Court in the following words:—

“Another important factor deserves to be considered. While making a classification there must be some peculiarities which distinguish that class from the rest. For example, the State and Central Government servants can be classified separately, because they are liable to transfer. The staff employed in the foreign Mission would be a separate class as such staff would be experiencing difficulties in the education of their children. Similarly, the wards of the political sufferers would be a different class as such wards on account of the activities of their parents (in the freedom fight) would not have the usual educational facilities which others will get. In the present case, there is no such intelligible differentia while classifying the University employees separately. There is no possibility of such employees being transferred from one place to another. Similarly, the University employees cannot be termed as those who could not arrange for the education of their children on account of any other peculiar difficulties. The ‘ward of the University employees’ are thus at par with the Wards of any other employees. Not only that but they are also at par with wards of other persons such as petty traders, businessmen, artisans etc. In view of this discussion, it is clear that by creating four reservations in favour of the Wards of the University employees, the University has acted in a discriminatory manner and the principle of equality has not been followed. The discrimination can be seen from the fact that the four students of this category (who are respondents Nos. 3, 6, 7 and 8 in Writ Petition No. 2707/1979 were admitted though on merit, they could not have been admitted. Their (except respondent No. 8) percentage of marks was far below that of many of the petitioners before us.”

and

“ \* \* \* It is in this way that the petitioners are entitled to say that the reservation in question is bad. The result,

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therefore, is that the four reservations in favour of the Wards of the University employees cannot be allowed to stand.”

In the light of the above observations it seems to be plain that the petitioners are even on a stronger footing in assailing the reservations in favour of the children of the employees of the Punjab Engineering College, Chandigarh and the admissions made thereto. Herein the said reservations have not been shown to be even remotely sanctified by any statutory provision or within any authoritative instruction. There seems to be no option but to strike down this reservation as also the consequential filling of seats thereunder.

26. Repelled on all their defences on merits a last ditch attempt was made on behalf of the private respondent No. 3 to stall the matter on procedural technicalities. It was argued that every candidate who has been granted admission in the impugned selection or later has not been specifically impleaded as a party and, therefore, no writ can issue in favour of the petitioners. As is manifest from the somewhat exhaustive discussion earlier, the challenge herein is to the very concept of spot selection and the violation of Article 14 by the procedure adopted. It is not the individual cases of the respondents which are being put in issue but the very constitutionality of the State action. Again the petitioners have averred in no uncertain terms that in the absence of any access to the record of the respondent-College, they were unable to locate and specify each and every candidate who was unconstitutionally granted admission, barring those who have been so impleaded. In this context it seems to be well-settled that the private respondents may be proper parties but are not necessary parties whose absence can be a ground for denial of relief. In *The General Manager, South-Central Railway, Secunderabad and another v. A.V.R. Siddhanti and others*, the policy decisions of the Railway Board pertaining to fixation of seniority, pay etc. of some of its employees were challenged as being violative of Articles 14 and 16 of the Constitution. A similar objection that the private persons adversely affected were not impleaded as respondents was raised. Categorically rejecting the same it was observed—

“\* \* \* \* In the present case, the relief is claimed only against the Railway which has been impleaded through  
(9) AIR 1974 SC 1755.

its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 15, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

A similar objection was again rejected by their Lordship of the Supreme Court in *Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others* (9A). Within this Court a technical objection of this nature was rejected in *Naresh Kumar Joshi and others v. The State of Punjab and others* (10), in the following words:—

"\* \* \*. However, I do not find any merit in these objections, firstly, for the reason that the petitioners are not challenging the selection of any particular candidate; what they are challenging is the mode and manner of selecting the candidates and secondly, from the pleadings it is patent that while selecting the candidates from particular district the merits of the selected candidates were not considered vis-a-vis the candidates from other districts. In the face of this admitted position no further material is required to hold the selection as violative of Article 14 of the Constitution of India."

Following the aforesaid authoritative enunciation the objection raised with regard to the impleading of private respondents has to be necessarily rejected.

27. Adverting specifically to the case of Ashok Kaushik, who is stated to have been granted admission under the order of respondent No. 1. Chandigarh Administration, it deserves highlighting that he had merely filed a suit in the Civil Court. There was no interim relief or direction by the Civil Court itself to grant him admission. Nevertheless the Chandigarh Administration

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(9A) (1974) 1 S.L.R. 470.

(10) 1982 (1) S.L.R. 15.

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directed his admission. This order, therefore, suffers equally from the vice of violating the merit rules and the binding stipulations laid out in the prospectus and, therefore, cannot be allowed to stand.

28. For clarity's sake, it is recalled that there is no challenge in this writ petition to the admission granted to the foreign scholars on the nomination of the Ministry of External Affairs, Government of India and the same would in no way be affected.

29. To conclude finally in the light of the findings arrived at in paras 16, 20, 24 and 25 above and as a necessary consequence thereof, the admissions granted to the following candidates are hereby quashed ;

- (i) those admitted against the seats reserved for the sons and daughters of the employees of the Punjab Engineering College ;
- (ii) those admitted on the basis of 'spot selection' on August 2, 1982; and
- (iii) those granted admission thereafter without following the procedure laid in the prospectus including Ashok Kaushik, allegedly admitted on August 10, 1982.

A further direction is accordingly issued to respondent No. 2, the Principal of the Punjab Engineering College to fill up the resultant vacancies forthwith from amongst the candidates on the waiting list in the order of merit. The official respondents would also take the requisite steps to enable the candidates, so selected, to complete their lectures in view of the present situation which has arisen due to no fault on their part.

30. As regards the candidates who are likely to lose their admission as a consequence of this order, a direction is hereby issued to the authorities to refund to them the entire amount paid by them towards their admissions in the Punjab Engineering College.

31. All the Writ petitions are allowed in the terms aforesaid with costs. Counsel's fee Rs. 500 in each case.

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N.K.S.