counsel for the petitioners that the vends should have been re-auctioned if highest bid was not to be accepted, cannot be accepted in the facts of the present case.

(12) The other question pressed into service on behalf of the petitioners is that respondents Nos. 6 and 7 were strangers and the additional licence on fixed terms could not be granted to them. They could also be granted to respondent No. 5, who in fact was the highest bidder as per stand of the State. This contention again cannot be accepted. Gurinder Singh was the bidder. From the documents produced and which were concluded at the time of the auction indicate the aforesaid person as partner in the three firms-respondents Nos. 5 to 7. It is not disputed that on conclusion of the auction the names of the partners could be disclosed. They were in fact disclosed. Annexure R. 5—Form M. 14 prepared on the spot on March 18, 1993 indicate Gurinder Singh as one of the partners of the three firms aforesaid. Thus contention of learned counsel for the petitioners that respondents Nos. 6 and 7 are strangers cannot be accepted. Finding No merit in this petition, the same is dismissed.

R.N.R.

Before Hon'ble J. L. Gupta, J.

MISS SHALU GUPTA,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 9889 of 1993

December 2, 1993.

Constitution of India, 1950—*Art.* 14, 226/227—*Admission against* 2 *per cent reserved seats in MBBS—BDS, BAMS (Ayurvedacharya) for sports persons—Criterion challenged that interse merit of sportsman/sportswomen shall be judged on basis of* +2 *result only—Whether action of respondents in grading sportsman for admission to medical courses only on the basis of performance in* +2 *courses violative of article* 14—*Held that classification is not violative of Art.* 14.

Held, that normally, there is a presumption in favour of constitutionality. If the appropriate authority on the basis of its experience finds that admission to the medical colleges should be made

purely on the basis of merit and a very limited departure should be made from that rule so as to grant a preferential treatment only to such persons as have participated in sports while undertaking the course of study which makes them eligible for admission to a course in medicine etc., it cannot be accused of having violated Article 14 of the Constitution. The students should be basically interested in academics and participation in sports is only an additional qualification. If this additional qualification has been attained by a candidate while studying for the +2 course, he becomes eligible for the grant of a preferential treatment. Otherwise, he is like all other students and has to compete with persons who do not fall within the deemed class. The classification has a reasonable nexus with the two fold object of selecting the best students as well as that of encouraging sportsmen. This classification is not unreasonable. If a student has taken interest in studies as well as in sports during the relevant period, he is made eligible for the grant of preferential treatment. Such a benefit is denied to the person who has not taken part in sports and distinguished himself during the crucial period.

(Para 12)

Further held, that the courts don't insist upon mathematical exactitude in a classification. The law requires that the impugned classification should not be unreasonable and arbitrary. If as a result of experience, the Government has chosen to classify the sportsmen and accorded preferential treatment to only such persons as have distinguished themselves during a particular interregnum (which is not irrelevant to the object of the classification), such action of the Government cannot be said to be arbitrary or unreasonable. Accordingly, it is held that the impugned classification is reasonable. It is not arbitrary. It does not create discrimination between two persons who may be similarly situated

(Para 13)

Constitution of India, 1950—*Art.* 226/227—*Admission against* 2 *per cent reserved seats in MBBS, BDS, BAMS (Ayurvedacharya)—Whether the criterion for admission should be made applicable forthwith ?*

Held, that indisputably, hithertofore, a sportsman was eligible to be considered for admission to the course even if he had not attained the distinction in sports during the +2 course only. As a result, a number of students like the petitiners in the present case may have rested on their oars after they had attained the requisite distinction in sports and not participated in any of the tournaments or championships while they were studying for the +2 course. The criterion laid down by the Government would certainly cause an irrepairable loss and an avoidable hardship to such students. In order to undo this unfair result, it appears just and reasonable to direct that the criterion now laid down by the Government should be enforceable only with effect from the admission to be made in the year 1995. This would help the respondents to achieve the desired

objective and at the same time avoid an undue hardship to the students. It is held that the impugned criterion is valid but it should be enforced from the year 1995-96 onwards.

(Para 18)

Constitution of India, 1950—Art. 226/227—Admission against 2 per cent reserved seats in MBBS—BDS, BAMS (Ayurvedacharya) whether respondents are bound to lay down minimum standard of qualifying marks in entrance examination for admission against seats reserved for sportspersons.

Held, that however, so far as the category of sportsmen is concerned, it is held that their admissions shall be made on the basis that a candidate has to secure 35 per cent marks in the entrance test before he can become eligible for admission to the course in question. The State Government shall consider the claims of the candidates accordingly.

(Para 25)

P. S. Patwalia, Advocate, *for the Petitioner.*

Jagmohan Singh Chaudhary, Addl. A.G. Punjab, *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioners in these 11 writ petitions are candidates for admission to the various 'medical courses' *viz.* MBBS, BDS, BAMS (Ayurvedacharya). They are seeking admission against the 2 per cent seats reserved for Sportsmen/Sportswomen. The primary challenge is to the stipulation in the criterion that *inter-se* merit of Sportsmen/Sportswomen shall be judged on the basis of their "performance in the +2 course only." A few facts relevant for the decision of the cases may be briefly noticed.

(2) The admission to the courses in Government colleges in Punjab is made on the basis of a competitive entrance examination. A Prospectus in this behalf was issued by the State of Punjab. The Punjabi University, Patiala was to conduct the examination. It was provided that the age of candidates for admission to these courses should not be less than "17 years on December 31, 1993." It was also provided that all "Punjab Domicile candidates who have secured at least 50 per cent (45 per cent in the case of candidates belonging to Scheduled Castes/Tribes) of the aggregate marks in the four compulsory subjects i.e. Chemistry, Physics, Biology and English taken

together of 10+2 pattern or equivalent examination shall be eligible to sit for the competitive Entrance Examination——". The examination was to be held on July 10, 1993. It was further provided that 2 per cent seats shall be reserved for Sportsmen/Sportswomen. The primary controversy raised in these petitions relates to para 4.2 (a)(i) contained in Chapter 4 of the Prospectus. It reads as under :—

> "4.2. (a) (i) : Admission shall be made strictly on the basis of relative merit of candidates determined on the result of the Competitive Entrance Examination (P.M.T.). In the case of reserved seats, relative merit of the candidates shall be determined within each category of reservation. In the case of category of Sports, relative merit of the candidate shall be determined on the basis of each sub-category within the main categories A, B, C & D, and *for this purpose only performance in the +2 course would be considered.* All certificates on the basis of which reservation is being sought will have to be appended with the application form in the first instance. No claim can be made/entertained at a later stage. This would apply to any additional certificate that may be needed from the Director Sports to categorise performance as per instructions issued by them from time to time.
>
> In the reserved category of children/widows of defence personnel candidates of sub-category (vi) (2) mentioned in para-III (c) infra shall be admitted only if eligible candidates of sub-category viii (i) are not available."
> (emphasis supplied).

(3) A perusal of the above would show that the relative merit of the candidates belonging to the category of Sports has to be determined on the basis of their gradation as Sportsmen for which purpose "only performance in the +2 course" has to be considered. Furthermore, no minimum qualifying marks making a person eligible for admission to the Course, have been laid down. As a result, the two questions which have been primarily raised by the counsel for the petitioners are :-

> (i) Whether the action of the respondents in grading Sportsmen for admission to the medical courses only on the basis of the performance in the +2 course is arbitrary, discriminatory and thus violative of Article 14 of the Constitution ?

(ii) Whether the admission to the seats reserved for the category of Sportsmen/Sportswomen should be made purely on the basis of the achievements in Sports or a minimum standard of qualifying marks in the entrance examination should be laid down ?

(4) These are the two basic issues which have been raised in Civil Writ Petitions Nos. 9889, 10044, 10361, 10520, 10529, 10779 and 11927 of 1993. In Civil Writ Petition No. 10523 of 1993, the petitioner claims that he has not been graded in accordance with the instructions issued by the State Government and that the various distinctions achieved by him have not been taken into consideration. In Civil Writ Petition No. 10559 of 1993, the petitioners claim that in spite of being in the merit list, admission has not been granted. In C.W.P. No. 11213 of 1993, the grievance is that the respondents have acted arbitrarily in not laying down minimum academic standards, and that the petitioner has not been graded in accordance with the prescribed criterion. In Civil Writ Petition No. 12007 of 1993, a slightly different issue has been raised. It has been claimed that the criterion which was prevalent hithertofore regarding determination of *inter se* merit of persons who had participated in events for Junior and Senior Persons had been arbitrarily altered,—*vide* letter dated May 14, 1993. A detailed reference to the factual and other aspects of these cases shall be made at the appropriate stage. In respect of the main controversy, a brief reference to the factual position brought out by the counsel for the petitioners in Civil Writ Petitions Nos. 9889 and 10044 of 1993 may be noticed.

(5) The petitioner in Civil Writ Petition No. 9889 of 1993 passed the (10+2) examination in May 1992. She secured 70 per cent marks. She then joined the B.Sc. Part I Course at Mohindra College, Patiala. In May 1993, she passed the examination for B.Sc. (Part I) and secured 70 per cent marks. She stood first in her college. The petitioner has further averred that she participated in the Sport of Fencing. She represented Patiala in the Junior Punjab Fencing Championship held in May 1992. Thereafter, she represented the Mohindra College, Patiala, in the Patiala District Fencing Championship held in November, 1992. She secured the second position. She then took part in the Senior Punjab Fencing Championship held in Patiala from February 19, 1993 to February 21, 1993. She won the individual prize in Fencing and was also a member of the team that won in the event or Fencing (Foil). She was a runner-up in Fencing (Sebre). The petitioner was also a member of the Punjab Team for the Senior National Fencing Championship held at Bhilwara, Rajasthan from March 27, 1993 to April 1, 1993. The team secured second

position in the event in Fencing (Foil). In view of the provision in the Prospectus as noticed above, the distinctions attained by the petitioner have not been taken into consideration on account of the provision in the Prospectus to the effect that only performance in the +2 course would be considered.

(6) Similarly, in Civil Writ Petition No. 10044 of 1993, the petitioner had qualified her (10+2) examination in May 1993. She claims to have attained various distinctions in Cycling. She avers that she had represented the Country in the First Junior Asian Cycling Championship at New Delhi and had also achieved the first place in the 21st Junior National Cycling Championship in the event of '2000 Meters team pursuit', 3rd position in '3 Kms. point race' and 2nd position in '3000 Meter Team Pursuit' in the 44th Senior National Cycling Championship. She was assessed as a B Grade Sportswoman and a certificate in this behalf was given to her on March 19, 1993. However, various distinctions attained by her were not being taken into consideration on account of the impugned provision in the Prospectus.

(7) It is against the background of the above noted factual position that the two questions posed above have to be considered.

It has been said that "health is the greatest of all possessions; a pale cobbler is better than a sick king." It may be that even the best of Doctors and Nurses are not able to "put scrambled egg back into the shell" yet in accordance with the mandate of Article 47 of the Constitution, the State has to perform the duty of improving public health. It is in the performance of this duty that the State opens medical colleges and hospitals. It can provide adequate medical service to ensure public health only by imparting medical education to students. In order to ensure that the medical profession is able to provide the healing touch, it is necessary that the criterion for selection ensures merit. Critical illness needs skilled specialists. Merit alone must be the test and the best alone should be allowed to enter the portals of medical colleges. Relaxation of merit can only result in social peril and paralyse public health.

(8) Another fact which must be noticed is that when State is burdened with the responsibility of providing measures for public health, it can reasonably choose sources from which admission to medical colleges has to be made. However, even while prescribing those sources, it is imperative that the classification meets the twin test of merit and rationality. It should be primarily with this object that a provision for holding an entrance test has been made. Different

institutions can have different educational standards. The alumnii of different institutions or from different universities may not have the same merit in spite of the fact that their scores in the examinations conducted by different universities are identical. A common entrance test is meant to ensure that all candidates are judged by the same standard. In other words, it can be said that the State Government which bears the expenditure for running the medical colleges can specify the sources for admission. However, the admission should be made on the basis of merit and certain definite academic standards.

(9) What is the position in the present case ? The State Government has 3 medical colleges—2 Dental colleges and one Ayurvedic College. There is a total of 350 seats in the Medical Colleges—80 seats in the Dental Colleges and 30 seats in the Ayurvedic College. 2 per cent of these seats have been reserved for Sportsmen/Sportswomen. However, for the purpose of admitting the students against these seats, it has been provided that "relative merit of the candidate shall be determined on the basis of each sub-category within the main categories A, B, C & D and for this purpose *only performance in the* +2 *course would be considered.*" The petitioners are aggrieved by the stipulation that their merit shall be considered only on the basis of the performance in the +2 course.

(10) The first question that arises for consideration is—Whether the action of the State Government in assessing the *inter-se* merit of Sportsmen only on the basis of performance in the +2 course is valid ?

Mr. P. S. Patwalia, learned counsel for the petitioner in Civil Writ Petition No. 9889 of 1993, contended that this classification creates an individious discrimination which is violative of Article 14 of the Constitution. Mr. Arun Palli who appeared for the petitioner in Civil Writ Petition No. 10044 of 1993 further contended that the classification was wholly arbitrary and had no rational relationship with the object of selecting the best students. On the other hand, Mr. Jagmohan Singh Chaudhary, learned Additional Advocate General, appearing for the respondents submitted that the basic academic qualifications prescribed by the Government for admission to the medical courses was that a student should have passed the (10+2) examination with at least 50 per cent marks. Since the academic performance in the +2 examination had to be taken into consideration for determining the eligibility of a candidate to even appear in the entrance examination, the impugned test provided by the respondents for judging the *inter se* merit of the candidates belonging to the category of Sportsman was just and reasonable. **Is it so ?**

(11) A perusal of Para 4.2 (a) (i) as reproduced above shows that admission to the medical courses has to be made "strictly on the basis of relative merit of candidates determined on the result of a competitive entrance examination.". A departure has, however, been made in case of Sportsmen. It has been provided that their *inter se* merit shall be determined on the basis of their gradation as Sportsmen. However, for this purpose, only performance in the +2 course has to be considered. In a nut-shell, it has been provided that if a student has distinguished himself in sports while studying for the +2 course, he would be considered for admission against the seats reserved for Sportsmen/Sportswomen. The class of Sportsmen has itself been divided into two categories *viz.* those who have distinguished themselves during the academic course which makes them eligible for admission to the medical course and those who have distinguished themselves either prior to or after the completion of the said course of study *viz.* +2. Is this classification discriminatory and violative of Article 14 of the Constitution ?

(12) Normally, there is a presumption in favour of constitutionality. If the appropriate authority on the basis of its experience finds that admission to the medical colleges should be made purely on the basis of merit and a very limited departure should be made from that rule as to grant a preferential treatment only to such persons as have participated in sports while undertaking the course of study which makes them eligible for admission to a course in medicine etc., it cannot be accused of having violated Article 14 of the Constitution. It is well to remember that the admissions in the present case are not being made to a Sports College so as to train sportsmen or to produce athletes and wrestlers. The admissions are actually being made to medical colleges with the object of producing dedicated Doctors. The students should be basically interested in academics and participation in sports is only an additional qualification. If this additional qualification has been attained by a candidate while studying for the +2 course, he becomes eligible for the grant of a preferential treatment. Otherwise, he is like all other students and has to compete with persons who do not fall within the defined class. The classification has a reasonable nexus with the two fold object of selecting the best students as well as that of encouraging sportsmen. This classification is not unreasonable. If a student has taken interest in studies as well as in sports during the relevant period, he is made eligible for the grant of preferential treatment. Such a benefit is denied to the person who has not taken part in sports and distinguished himself during the crucial period. One cannot say that the student who has succeeded in securing 50 per cent marks in the +2

examination without participating in sports is at par with another who has attained distinction in sports and yet secured the requisite standard in the academic field as well. Any achievement attained by a person either prior to or after completing the +2 course is not of the same relevance and importance as the one attained by a candidate during the said period of two years.

(13) No classification can be perfect. Every classification can result in a hardship to some student or the other. It is in view of this position that by process of interpretation, the test of reasonableness has been evolved. The course don't insist upon mathematical exactitude in a classification. The law requires that the impugned classification should not be unreasonable and arbitrary. If as a result of experience, the Government has chosen to classify the sportsmen and accorded preferential treatment to only such persons as have distinguished themselves during a particular interregnum (which is not irrelevant to the object of the classification), such action of the Government cannot be said to be arbitrary or unreasonable. The Government may have thought that participation in 'Sports' years before or after the time of passing the eligibility examination is irrelevant. Only those who have excelled during the crucial period of two years deserve to be helped. It accordingly took the impugned decision. Various other alternatives may have been available. It has chosen one. The petitioners contend that this is not the best one. It may be so. Yet, it is not for the court to lay down the criterion. The prerogative to decide questions of policy is that of the Government. It has exercised this right. Its decision is reasonable. It is applicable to all. It may not satisfy everyone but it is not unconstitutional.

(14) Accordingly, it is held that the impugned classification is reasonable. It is not arbitrary. It does not create discrimination between two persons who may be similarly situated. It does not suffer from the vice of discrimination. As such, it is not violative of Article 14 of the Constitution.

(15) In this behalf, it is relevant to mention that Mr. Jagmohan Singh Chaudhary, learned counsel for the respondents had produced various files of the Department during the course of the hearing of these cases. A perusal of the record showed that the Secretary to the Government, Department of Health, had called a meeting on 2nd March, 1993 for finalising the criterion for admission. This meeting was attended by the representatives of the universities, the Principals of Medical Colleges, the Director of Research and Medical Education

and by various other officers. The impugned decision was taken in this meeting. These persons are experts in the field of education. They understand their needs. Their decision though subject to judicial review cannot be set aside by Court unless it is found to be apparently arbitrary and unfair. Such is not the situation in the present case. As already observed, the decision is reasonable and fair. Even if two views are possible, the one taken by the experts cannot be substituted by the views of the Court.

(16) The next question that arises for consideration is—Would it be fair to the students who are competing for admission to the medical courses that the criterion laid down by the Government in the year 1993 be made applicable forthwith ?

(17) Indisputably, hithertofore, a sportsman was eligible to be considered for admission to the course even if he had not attained the distinction in sports during the +2 course only. As a result, a number of students like the petitioners in the present cases may have rested on their oars after they had attained the requisite distinction in sports and not participated in any of the tournaments or championships while they were studying for the +2 course. They could not have imagined that the criterion which had been in force for more than a decade shall be suddenly changed and the distinctions attained by them would be rendered irrelevant. It is quite likely that a student may have attained a very high distinction in sports while studying in the 10th class and may not have had the chance to compete in a tournament during the next two years. He may well have thought that on the basis of the distinction already secured by him, his admission was almost certain and, therefore, it was not necessary for him to participate in any tournament during the next two years. In fact, this actually appears to be the position in some of these cases. The criterion laid down by the Government would certainly cause an irrepairable loss and an avoidable hardship to such students. In order to undo this unfair result, it appears just and reasonable to direct that the criterion now laid down by the Government should be enforceable only with effect from the admissions to be made in the year 1995. This would help the respondents to achieve the desired objective and at the same time avoid an undue hardship to the students.

(18) In view of the above, it is held that the impugned criterion is valid but it should be enforced from the year 1995-96 onwards.

(19) The next question is—Whether the respondents were bound

to lay down a minimum standard of qualifying marks in the entrance examination for admission against the seats reserved for the Sportsmen/Sportswomen ?

(20) In this behalf, it is relevant to mention that Mr. Jagmohan Singh Chaudhary, learned counsel for the respondents, had produced the relevant files. Subsequently, at the asking of the Court Mr. V. K. Bhardwaj, I.A.S., Additional Secretary to the Government, who has present almost during the entire hearing, has even filed an affidavit. A perusal of the affidavit shows that a detailed merorandum dated February 12, 1982, suggesting that a candidate must secure 50 per cent marks in the competitive entrance examination (45 per cent for Scheduled Caste/Scheduled Tribes) before he can be eligible for admission to the MBBS/BDS courses in the State Medical Colleges, was placed before the Council of Ministers. This memorandum was considered by the Council of Ministers in the meeting held on April 29, 1982. The proposal was approved with the modification that the Scheduled Caste/Tribes candidates should secure at least 33 per cent marks instead of 40 per cent marks in the competitive entrance examination. Thereafter, a memorandum was placed before the Governor-in-Council on November 26, 1991, for reducing the percentage of marks. It was decided that "in order to fill available seats in the Medical Colleges, qualifying percentage of marks of (for) the PMT may be reduced in the first instance by 1 per cent for general categories and 2 per cent for candidates belonging to the Scheduled castes category. If even this relaxation did not result in sufficient number of candidates making the grade, a further 1 per cent relaxation could be allowed to candidates in the general category and a further 2 per cent relaxation allowed to candidates belonging to the Scheduled Castes." Thereafter, a memorandum was placed before the Council of Ministers on July 13, 1992, for waiving off the condition of qualifying marks in the PMT. This suggestion was approved. As a result, even a candidate who secures 1 per cent marks in the entrance test is eligible for admission to the courses in question. Is this action legal and valid ?

(21) It cannot be denied that medical education is expensive. It costs the State dearly. Mr. Bhardwaj had mentioned that on a rough estimate, the State spends an amount of nearly Rs. 4 lacs per student during the course of about 4½ years. Obviously, it imposes a significant burden on the tax-payer. Ours is a poor country. The meagre resources that are available cannot be squandered merely because the seats are available. It is, thus, imperative that a minimum standard should be prescribed

(22) This matter is not *res integra*. The question had arisen for consideration before a Full Bench of this Court in *Amardeep Singh Sahota* v. *The State of Punjab etc.* (1). In paragraph 19, their Lordships were pleased to observe as under :—

> "Students pursuing courses in medical or engineering colleges. which are technical subjects, require an academic mind, as ultimately after obtaining degrees from these professional colleges, they serve humanity. Policy of the Government laying down the sole criterion for admission as sports cannot be countenanced. It would be against public interest and wholly arbitrary. Excellence in sports may be a very important consideration for admission in the sports quota but a certain minimum academic standard—is also required to enable the students to obtain degree."

(23) Further, it was held that "35 per cent marks shall be treated as the minimum qualifying marks for the year in question as this percentage of marks appears to us the most reasonable and fair." In view of the judgment of the Full Bench, the decision of the Government to do away with the requirement of qualifying marks totally cannot be sustained.

(24) However, on behalf of the respondents, it was pointed out that only such candidates as had secured 50 per cent marks in the +2 examination are eligible to compete for admission to the medical courses. This, according to the learned counsel, ensured a minimum academic standard. This contention cannot be sustained. Firstly, a similar condition existed even last year yet the Full Bench in *Amardeep Singh Sahota's* case took the view that a minimum standard had to be laid down. Still further, it is also indisputable that marks in the +2 examination are not the criteria for admission to the course. The entrance test is held to determine the suitability of the candidates as also their *inter se* merit. Consequently, the objection raised on behalf of the respondents in this behalf cannot be sustained.

(25) It was stated before this Court that admissions to the various courses except in so far as these related to the category of Sportsmen/ Sportswomen had already been finalised. This being the position, it would not be fair to upset the admissions already made. However, so far as the category of Sportsmen is concerned. it is held that their admissions shall be made on the basis that a candidate has to secure

(1) 1993 (2) P.L.R. 212.

35 per cent marks in the entrance test before he can become eligible for admission to the course in question. The State Government shall consider the claims of the candidates accordingly.

(26) Having answered the two primary issues raised in these cases, the ancillary questions raised in the various petitions can now be considered.

CIVIL WRIT PETITION NO. : 10523 of 1993

(27) The petitioner in this case competed not only for the seats meant for general category but also on the basis of his being a sportsman. It is averred that the petitioner participated in the sport of cycling. He began to participate in this 'sport' in the year 1988. In 1989, he achieved the distinction "of being the best 'under 14 Cyclist' in the country." In 1990, he achieved a National record in the event of Cycling. He also attained a distinction in the 10th Sub-Junior National and the 12th All India Inter State Cycling Championship held from December 29, 1991 to January 2, 1992. He was granted a gradation certificate on June 19, 1993. A copy of this certificate has been produced as Annexure P-5 with the writ petition. It has been averred that "in granting the aforesaid gradation certificate to the petitioner, the Director of Sports, Punjab, respondent No. 2, did not refer to the 10th Sub Junior National and the 12th All India Inter State Cycling Championship." It has been further averred that the petitioner was not being considered for admission against the reserved seats for sports category as respondent No. 2 while grading the petitioner had taken into consideration only his achievements during the year 1990-91. Since this distinction had been achieved by the petitioner while he was not studying for +2, it was excluded from consideration by the respondents. It has also been averred that the petitioner's father had approached respondent No. 2 for consideration of his claim on the basis of the petitioner's participation in the events of Cycling etc. held from December 29, 1991 to January 2, 1992. This request was not accepted to by rsepondent No. 2. The petitioner claims that he is entitled to be graded as a 'B' Grade Sportsman and that the action of the respondents in not considering him against one of the seats reserved for Sportsmen, is illegal and invalid.

(28) Surprisingly, the Director of Sports inspite of having been impleaded as a respondent, has not filed any written statement. In the written statements filed on behalf of the State Government and the Principal, Government Medical College, Patiala, it has been

inter alia mentioned that in view of the prescribed criterion, the petitioner was not entitled to be considered against the seats reserved for sportsmen on the basis of the gradation certificate issued to him. According to the gradation certificate, the petitioner had participated in the sports in the year 1990-91 when he had secured the 1st position. However, since this distinction was not achieved during the +2 course, his claim could not be considered. With regard to the specific grievance made by the petitioner in paragraph 8 of the writ petition, respondent No. 1 has merely stated that it relates to respondent No. 2.

(29) Another written statement has been filed on behalf of Miss Deepti Gaba who was impleaded by an order passed on September 6, 1993. In this written statement, it has been *inter alia* averred that the admission has to be made on the basis of the conditions laid down in the Prospectus which are legal and valid. It has been further averred that the Director of Sports issues gradation certificates on the basis of the instructions issued by the Government from time to time. The respondent avers that no gradation certificate can be issued to the petitioner for his participation in the Sub Junior National Cycling Championship in view of the instructions dated August 4, 1992, a copy of which has been appended as Annexure R-4/1 with the written statement. On these premises, the action of the respondents in not considering the claim of the petitioner for the seats reserved for Sportsmen has been controverted. These instructions *inter alia* provide that "no sports gradation certificate shall be issued to the players who participated in Mini, Sub Junior and in the tournaments which are organised for the players under 15 years of age."

(30) Mr. Jagdish Singh Khehar, learned counsel for the petitioner. submitted that the petitioner was a distinguished sportsman who had excelled in cycling at a young age and he deserves to be considered against the seats reserved for sportsmen. Accordingly, he prayed that the Director of Sports should be directed to issue a fresh Gradation Certificate to the petitioner indicating his participation in the 10th Sub Junior National and 12th All India Inter State Championship and the criterion laid down in the Prospectus to the effect that only achievements in the +2 course shall be considered, should be quashed.

(31) So far as the grievance regarding the criterion is concerned, it does not subsist in view of the conclusion as already mentioned above that the impugned criterion shall apply from the year 1995-96

only. So far as the grievance regarding the gradation certificate is concerned, it deserves to be noticed that the candidates who will attain the age of 17 years on December 31, 1993, are eligible to be considered for admission and yet those who participate in Sub Junior tournaments which is confined to persons who are below 15 years of age have been excluded from consideration by the instructions at Annexure R-4/1. Equally, it deserves notice that even though, these instructions were issued in August 1992, no challenge thereto has been made in the present petition. Be that as it may, the fact remains that the Director of Sports has not filed any written statement in the writ petition. In this situation, it is fair and proper that the Director (respondent No. 2) considers the petitioner's claim afresh in accordance with the instructions issued by the Government. If he finds that the gradation certificate issued to the petitioner requires to be modified, he will do so immediately. The respondents will then consider the petitioner's claim for admission on the basis of the original or the modified certificates, if any, against the seats reserved for the Sportsmen in accordance with the observations made above.

CIVIL WRIT PETITION NO : 10559 of 1993

(32) In this writ petition, the two petitioners have prayed for the issue of a writ, direction or order in the nature of mandamus directing the respondents to admit them in the first year of the MBBS Course against the seats reserved for Sportsmen/Sportswomen.

(33) In the written statement filed by the Principal of the College, it has been *inter alia* averred that the selection list will be finalised after the receipt of the list from the Director of Sports after verification and that the petitioners will be considered under Sports category.

(34) In this view of the matter, a detailed examination of the factual position is not necessary. It is directed that the claims of the petitioners be considered in accordance with law along with that of the other eligible candidates.

CIVIL WRIT PETITION NO : 12007 of 1993

(35) In this case, the petitioner has challenged the instructions issued by the State Government,—*vide* letter dated May 14, 1993. A few facts need to be noticed.

(36) On August 4, 1992, the State Government had issued instructions to all Heads of Departments regarding issuing of sports gradation certificates. Note I provided as under :—

"Regarding senior and junior tournaments/Championships Senior shall have precedence over Junior. Moreover Junior and School Championships will be considered at par."

By letter dated May 14, 1993, this note was substituted by the following :—

"Regarding Senior and Junior Tournaments/Championships Senior shall have precedence over Junior in the same performance i.e. for example Gold Medalist in Senior category shall have precedence over Gold Medalist in Junior category Silver Medalist in Senior category over Silver Medalist in Senior category and so on. Moreover Junior and School Championships will be considered at par."

(37) On behalf of the petitioner, it has been contended that the Note introduced on May 14, 1993 was in fact circulated much later and in fact amounted to a retrospective amendment of the existing provision and that it was arbitrary.

(38) No written statement to this petition was filed on behalf of the respondents. However, Civil Miscellaneous application No. 11409 of 1993 was filed on behalf of Vikramjit Singh Bawa and Kiranbir Kaur under Order 1 Rule 10 with a prayer that the two applicants may be impleaded as respondents. In this application, it has been *inter alia* averred that Civil Writ Petitions Nos. 10897 and 10255 of 1993 had been filed by the applicants which were heard and decided by a Division Bench consisting of M. S. Liberhan and H. S. Brar, JJ. The State had given an undertaking that the instructions dated May 14, 1993, shall be followed. The writ petition was, accordingly, dismissed as having become infructuous. However, the right of respondent No. 7 in Civil Writ Petition No. 10897 of 1993 to challenge the instructions was protected. The applicants have further pointed out that the impugned instructions are only a clarification of the instructions issued on August 4, 1992, and cannot be challenged on the grounds urged on behalf of the petitioner.

(39) A perusal of the instructions dated August 4, 1992, shows that those attaining distinctions or participating in tournaments/championships held for the Senior category were to have precedence over other attaining distinctions or participating in tournaments for the junior category. By the impugned circular, it has been provided that if a person wins a Gold Medal in the Senior category, he shall

have precedence over a Gold Medalist in the Junior category. This is not only fair but only a clarification of the existing criterion. It only states explicitly something which was implicit in the original criterion. As such, it can neither be said to be arbitrary nor retrospective in operation.

(40) Mr. Narinder Singh, father of the petitioner who argued the case also urged that Note 1 in the instructions issued on August 4, 1992 had been specifically up-held by the Full Bench in *Amardeep Singh Sahota's* case. This does not appear to be really so. In paragraph 25 of the judgment to which reference was made by Mr. Narinder Singh, their Lordships were considering the instructions dated 7th/8th June, 1991. However, even if it is assumed that the provision in the instructions issued,—*vide* letter dated 4th August, 1992 was identical to the one considered by the Full Bench, it cannot be said that the State Government has acted arbitrarily in taking the view that only when the achievement is at the same level that the Senior would have precedence over the Junior. The implication of the instructions is that a mere participant in the event held for the senior category cannot have precedence over a Gold Medalist in the junior category. This is just and reasonable. It cannot be dubbed as arbitrary and consequently, the instructions cannot be said to be violative of Article 14 of the Constitution. Such a view could have been taken even under the original instructions. Consequently, the date of their decision etc. is of no relevance. There is no merit in this petition. It is, consequently, liable to be dismissed. So far as Civil Miscellaneous application No. 11409 of 1993 is concerned, it is allowed.

CIVIL WRIT PETITION NO : 11927 of 1993

(41) In this writ petition, the petitioner has challenged the provision regarding determination of *inter se* merit of sportsmen on the basis of their performance in +2 course. So far as this plea is concerned, it may be pointed out that in view of the conclusions recorded above, the petitioner is not adversely affected, by the impugned provision in the Prospectus. As such, the contention raised on his behalf is infructuous. However, it deserves to be mentioned that on behalf of the respondents, it was pointed out by Mr. R. D. Sehgal, learned counsel for the petitioners in another case, that the petitioner, Mr. Gurmohan Singh had been studying at Gwalior till September, 1992. Inspite of this, he had been given 'B' gradation by the Director of Sports on the basis of his participation in certain tournaments held in December 1992 and February 1993. The record produced on behalf of the respondents did show that the petitioner had passed

the (10+2) examination from the School at Gwalior. It would be in the fitness of things for the Director of Sports to examine the factual position before deciding the matter finally.

(42) Another fact which may be mentioned here is that Civil Misc. application No. 11408 of 1993 had been filed under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure. In this application, it has been *inter alia* averred that in the case of Sportsmen, the minimum requirement of securing 35 per cent marks in the entrance test should not be laid down and that the criterion laid down for the year 1992-93 was different from the one laid down for the year 1993-94. The distinction pointed out was that while during the last year, it was provided that the minimum marks of eligibility will be communicated subsequently, no such stipulation had been made in the Prospectus for the current year.

(43) The distinction sought to be pointed out is wholly inconsequential. In spite of the stipulation made in the Prospectus, no requirement regarding the minimum marks had been laid down. Similar is the position this year. No qualifying marks have been prescribed. The ratio of the Full Bench judgment in Amardeep's case is clearly applicable. This application is wholly lacking in merit and is, consequently, dismissed.

CIVIL WRIT PETITION NO : 11213 of 1993

(44) In this writ petition, Mr. Ashwani Chopra, learned counsel for the petitioner, has raised a two-fold contention. Firstly, it has been claimed that a minimum standard of qualifying marks in the entrance examination should be laid down. Secondly, the petitioner claims that holders of "only participation certificates" cannot have preference over those who have obtained medals. Reference in support of this contention has been made to the letter dated May 14. 1993.

Both these contentions have to be sustained in view of what has been said above.

(45) Another fact which may be mentioned here is that as already noticed, the Director of Sports has not filed any written statement in these cases. Certain grievances have been made by counsel for the petitioners. If written statements had been filed, it would have been possible to adjudicate upon the respective contentions. In the absence of written statement, what can only be

said is that the Director of Sports shall consider the respective merits of all the candidates in accordance with the instructions issued by the Government and the above observations. If the gradation certificates issued by him need modification, he will do so. If any of the petitioners make a representation pointing out certain facts which have escaped the notice of the Director earlier, he will take that representation into consideration while finally determining the *inter se* merit of the different candidates on the basis of the certificates produced along with the applications and the above observations.

In view of the foregoing discussion, it is concluded as under :—

(1) The stipulation in the Prospectus that relative merit for the candidates in the category of sports shall be determined only on the basis of the performance in the +2 course is valid. This condition shall, however, be applicable for admissions starting from the year 1995-96.

(2) No candidate shall be eligible for admission to the Medical courses against the seats reserved for the category of sportsmen unless he has secured at least 35 per cent marks in the entrance examination.

(3) The instructions issued—*vide* letter dated May 14, 1993, are only by way of clarification of the order dated August 4, 1992. These are valid.

(4) The Director of Sports, Punjab, Chandigarh shall consider the cases of all the petitioners in accordance with the observations made above. While doing so, he will keep in view the stipulation in the Prospectus that only the certificates appended with the application form in the first instance shall be taken into consideration and that no claim shall be entertained at a later stage. He will determine the *inter se* merit of the candidates accordingly. If he finds that the candidate needs to be graded afresh on the basis of the certificates produced with the application form, he will do so.

(46) Civil Writ Petition No. 12007 of 1993 is dismissed. The other writ petitions are allowed in the above terms. In the circumstances of the cases, there would be no order as to costs.

A Post-script Medical Colleges in the State are run by the Government. The number of seats is limited. The number of candidates is

continuously expanding. By now, it is well known that almost every year the criterion for admission is modified in one way or the other. As a result, significant amount of litigation ensues. While the students face uncertainity, the admissions to various courses are delayed. This does not promote the interest of any one. On the contrary, the cause of education suffers. In this situation, it appears to be in the interest of all concerned that a proper legislation is promulgated so that the matter is settled and the continuous uncertainity is avoided. This would also obviate the criticism that is often levelled against the change in criterion. It would infuse confidence in the minds of all concerned.

J.S.T.

Before Hon'ble A. L. Bahri & H. S. Brar, J.

BABU RAM, CHAIRMAN, PANCHAYAT SAMITI PINJORE,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition 3227 *of* 1994.

April 21, 1994.

Constitution of India, 1950—*Arts.* 226/227—*Punjab Panchayat Samiti and Zila Parishad Act,* 1961—*S.* 19(1)—*Resignation of Chairman and thereafter its withdrawal Resignation to become effective only after a resolution was passed by the Samiti accepting the same—However, resignation withdrawn before resolution—Thus after resignation withdrawn there could be no agenda to consider the same by the Samiti—Resolution accepting resignation cannot be sustained.*

Held, that though there is no specific provisions in the Act for withdrawal of the resignation by the Chairman, however. the resignation was to be effective only after a resolution was passed by the Samiti accepting the same. The petitioner, thus, continued to be Chairman upto the date of passing of the resolution i.e. February 21, 1994. Resolution itself indicates that the resignation had been withdrawn earlier thereto. Thus after withdrawal of the resignation there could not be any agenda to consider the resignation by the Samiti. The resolution aforesaid accepting the resignation of the petitioner cannot be sustained in law.

(Para 6)