

JAGDISH NEGI, PRESIDENT, UTTARAKHAND
JAN MORCHA AND ANR.

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v.

STATE OF U.P. AND ANR.

AUGUST 21, 1997

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[S.B. MAJMUDAR AND D.P. WADHWA, JJ.]

Constitution of India—Article 32—PIL-residents of Uttarakhand and hill areas—Judicially recognised as socially and educationally backward class citizens—Claim of permanent reservation in medical colleges—Held, State entitled to review the situation from time to time.

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U.P. Public Service (Reservation for Schedule Caste, Scheduled Tribe and Other Backward Classes) Act, 1994—Claim of reservation in agricultural colleges—Directions issued to State for future admissions—Prompt decision to be taken, well before time.

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Claim of Reservation in Government Services—State showing proportionate representation of Uttarakhand region as compared to other areas in State—Claim of the Petitioners not factually made out—Contention rejected as benefit is already made available.

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The Petitioners moved a writ petition on behalf of the people of nine hill district comprising of Almora, Pithoragarh, Pauri Garhwal, Chamoli, Tehri, Uttarkashi, Nainital, Dehradun and Haridwar in the Uttarakhand region seeking the benefit of enforcement of the reservation policy adopted by the Respondent- U.P. Government.

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The Petitioners contended that despite the fact that they were treated as socially and educationally backward citizens entitled to 27% reservation under the U.P. Public services (Reservation For Schedule Castes, Scheduled Tribes and other Backward Classes) Act, 1994, the reservations in medical colleges in State of U.P. were continued from year to year and that the said action of the State is totally arbitrary and unconstitutional, that the first respondent should be directed to make available the scheme of reservation without any time limit so long as the Reservation Act continues to operate in the State, that Delhi though the benefit of reservation is available in medical courses from year to year, it is not available in

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A admissions relating to agricultural courses which is discriminatory, unreasonable and unconstitutional, and that the benefit of 27% reservation is not made available to the Petitioners in the Government services and it amounts to denial of equal opportunity to these class of citizens and that it is unconstitutional.

B The Respondent-State submitted that though the statutory scheme of 27% reservation is available to socially and educationally backward citizens in U.P. and Uttarakhand but they cannot be so treated for all times to come, that so long as they are so treated by the State 27% reservation will be available to them along with their counterparts residing in the plains, that the policy of reservation has to be operated yearwise and not perpetually, that for admission in the agricultural courses the State had not yet decided as to whether that benefit should be made available to the Uttarakhand residents, that in the case of Government services also even though the Petitioners fall under socially and educationally backward classes the entire 27% cannot be given and it depends upon the proportionate percentage of population residing in Uttarakhand areas as compared to others living in plain and that the whole State has been taken as one unit and on the basis of the comparative density of population in the hill regions vis-a-vis remaining parts of the State appropriate and proportionate reservation out of 27% quota is made available to socially and educationally backward residents of hill areas and Uttarakhand areas.

Allowing the Petition partly, the Court

F HELD : 1. The State is bound to treat the residents of Uttarakhand and hill areas as socially and educationally backward class of citizens from 1974 till date, in the light of its own policy decisions. However, it is open to the State to review the situation from time to time and to take its own policy decision in the light of relevant material available to it in future. Such an exercise is perfectly legitimate and permissible and hence it is not possible to hold that the reservation for citizens of hill regions must be made available to them without any limitation of time. [492-A-C]

Indra Sawhney & Ors. v. UOI & Ors., [1992] Supp. 3 SCC 217; *State of U.P. v. Pradip Tandon & Ors.*, [1975] 2 SCR 761; *Anil Kumar Gupta etc. v. State of U.P. & Ors.*, JT (1995) 5 SC 505, relied on.

H 2. It is obvious that when the State itself in its wisdom has considered

residents of the Uttarakhand areas as socially and educationally backward for being included for consideration towards 27% reservation available to that class for admission in Medical Colleges since 1977, afortiori they have to be considered eligible for being included in this said quota, for admission to agricultural colleges. The stand of the respondent-State that it is still considering their claims for such reservation in agricultural colleges for 1997, to say the least, is totally inconsistent and nothing short of being treated as arbitrary and illegal. [492-G-H]

3. If in future for the year 1998 onwards, if the State takes a decision that residents of Uttarakhand and hill regions of the State are to be still considered as socially and educationally backward class of citizens for the relevant years, then the State must take a prompt decision in this connection at least three months prior to starting of academic terms for medical and other educational courses including agricultural education to be imparted in the Government institutions in the State and such decision should be properly published in newspapers having wide circulation in the concerned regions of the State in this connection. It is obvious that such a decision has also to be properly and promptly conveyed to all authorities concerned with the imparting of education in different colleges situated in the State and who are required to follow the policy of reservation as envisaged by the State. Such a decision to be taken by the State in future years should be uniformly applied to all types of academic education courses not merely confined to medical courses conducted at Government colleges and other institutions covered by the reservation scheme for admissions. The stand taken by the Government of U.P. in its letter to the Advocate that no final decision has been taken is unjustified. [493-B-F]

D.S. Nakara & Ors. v. UOI, [1983] 2 SCR 165; *Superintending Engineer, Public Health, U.T. Chandigarh & Ors. v. Kuldeep Singh & Ors.*, JT (1997) 2 SC 509; *Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Co-Op. Society & Ors. v. Haribhai Mevabhai & Ors.*, [1996] 10 SCC 320, referred to.

4. The Policy of reservation of 27% in Government Service for socially and educationally backward classes of citizens as envisaged by the Reservation Act has ensured the benefit of the residents of Uttarakhand and hill regions on the basis of comparative density of population in the hill regions vis-a-vis remaining parts of the State. Therefore, it cannot be said that the

A said benefit is not available to the residents of this region. [495-F]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 534 of 1996.

(Under Article 32 of the Constitution of India.)

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Satish Chandra and N.S. Bisht for the Petitioners.

A.B. Rohtagi, (Ms. Madhu Moolchandani and Ms. Sushma Suri) (N.P.) and R.B. Misra for the Respondents.

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The following Judgement of the Court was delivered by

S.B. MAJMUDAR, J. By an earlier order of this Court dated 5th May, 1997 this writ petition was ordered to be placed for final disposal. That is how it has reached final hearing before us. This petition under

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Article 32 of the Constitution of India is moved by way of public interest litigation by Uttarakhand Jan Morcha through its President and by one Jagmohan who is resident of Barakhan, Village IRA, situated in Almora district of U.P. The petition is filed against State of U.P. and Union of India. It is the case of writ petitioners that in the State of U.P. there are

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nine hill districts comprising of Almora, Pithoragarh, Pauri Garhwal, Chamoli, Tehri, Uttarkashi, Nainital, Dehradun and Haridwar and that people of this region, that is Uttarakhand, according to the petitioners, are judicially recognised as socially and educationally backward classes citizens. For supporting this contention reliance is placed on two decisions

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of this Court in the case of *State of Uttar Pradesh v. Pradip Tandon and Ors.*, [1975] 2 S.C.R. 761 and in the case of *Anil Kumar Gupta, etc. v. State of Uttar Pradesh and Ors.*, JT (1995) 5 SC 505. It is their contention that as the residents of Uttarakhand region are recognised as socially and educationally backward classes they are entitled to the benefit of Articles 15(4) and 16(4) of the Constitution of India and that respondent No.

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1-State has already taken a policy decision that in Government services as well as in educational institutions run by the State, 27 per cent reservation will be available to socially and educationally backward classes of citizens. The said submission of the petitioners is based on an earlier Resolution of 1977 of U.P. Government which had been later converted into a statutory scheme of reservation as per the U.P. Public Services (Reservation For

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Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act,

1994 (hereinafter referred to as 'Reservation Act'). The petitioners contend that despite this statutory policy of reservation adopted by the first respondent- State which has continued all throughout, the first respondent while granting reservations for admission in colleges imparting medical education in State of U.P. treats the residents of Uttarakhand as entitled to be considered for the benefit of the aforesaid reservation of 27 per cent as socially and educationally backward citizens only from year to year and thus these classes of citizens are kept guessing as to whether this scheme of reservation will be continued from time to time or not. The petitioners contend that this scheme of reservation which has come to stay by the aforesaid statutory enactment must be treated to be available to the Uttarakhand residents not for a limited period but for all the time during which reservation policy reflected by the statutory provisions of the Reservation Act remained in force. They further contend that so far as admissions to agricultural colleges are concerned even this benefit of the reservation is not being granted by the first respondent-State to Uttarakhand residents. This amounts to clear act of discrimination on their part. It is also contended that aforesaid statutory scheme of reservation is not made available to Uttarakhand residents even in Government services, though such benefit necessarily flows from the statutory scheme of reservation as per the aforesaid Reservation Act. For ventilating these grievances the aforesaid petition is moved for enforcement of the fundamental rights of the residents of Uttarakhand as flowing from Articles 15(4) and 16(4) of the Constitution of India. The diverse reliefs have been prayed for as under:

(a) to include the entire people of Uttarakhand and hill areas of U.P., comprising the districts of Almora, Pithoragarh, Pauri Garhwal, Chamoli, Tehri, Uttarkashi, Nainital, Dehradun and Haridwar in the list of O.B.C. for the purposes of reservation in services, and admission in educational, technical and medical institutions.

(b) to keep in abeyance all orders, notifications and ordinances issued for reservation of O.B.C. in Uttarakhand and hill areas of U.P. subject to the decision of the Apex Court.

(c) to make special provision under Articles 15(4) and 16(4) of the Constitution to ensure exemption of tuition fees, free supply of books and uniforms, mid-day meals, special hostel facilities and stipends for the

A students of Uttarakhand irrespective of caste and creed, for their educational development.

(d) to make sufficient provision for the social educational and economic upliftment of Uttarakhand and to create sufficient job opportunities by proper exploitation of natural resources of the region.

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This petition is sought to be resisted on behalf of the State. A counter affidavit in this connection has been filed by one Shri C.K. Tewary, Special Secretary, Uttarakhand Vikas Vibhag, U.P. Government, Lucknow. We shall refer to the relevant averments found in this counter affidavit at an appropriate place in the latter part of this judgment.

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During the hearing of this writ petition at an earlier stage a submission was made on behalf of the first respondent-State that the U.P. Government had issued a notification declaring that residents of the hill areas will be treated as socially and educationally backward classes citizens for admissions to medical colleges in the State for enabling them to get requisite reservation as per Article 15(4) of the Constitution of India. The parties' counsel were, therefore, directed to produce copies for the said notification by an order of this Court dated 10.11.95. Thereafter the matter stood adjourned from time to time and ultimately learned senior counsel for the petitioners submitted before this Court on 18.11.96 that two notifications had been issued by the first respondent-State on 6.11.95 and 17.11.95 in this connection. We will refer to these notifications later on. Relying on these notifications an apprehension was voiced by Shri Satish Chandra, learned senior counsel for the petitioners, that the orders contained in the Government notification of 17th November 1995, including the residents of hill areas of Uttarakhand in the category of socially and educationally backward classes citizens would be confined only to one year, that is, 1995. There were no express words in the Government order to continue the reservation on a long term basis. On this apprehension of Shri Satish Chandra, learned senior counsel for the petitioners, Mr. A.B. Rohtagi, learned senior counsel for the respondent sought some time for getting appropriate clarification from the State. The said clarification was brought on record by additional affidavit on behalf of the State filed by Deepak Rai Vijn, Joint Secretary, Uttranchal Vikas Vibhag, Secretariat, Lucknow, U.P. By the said affidavit it was clarified

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that the Government Order dated 17.11.95 regarding reservation for Uttarakhand residents for admissions to medical colleges was to continue to remain in force for subsequent years for the combined Pre-Medical Test, i.e., for the years 1996 and 1997. As regard Government Order dated 6.11.95 it was submitted that reservation provision for agricultural courses was under consideration.

It is in the light of the aforesaid developments pending this petition that the main grievances put forward by learned senior counsel Shri Satish Chandra for the petitioners will have to be examined. We may note that though various prayers (a) to (d) are put forward in the petition, only prayer (a) was pressed for our consideration. In this connection learned senior counsel for the petitioners raised the following three contentions for our consideration :

1. Despite there being a clear cut statutory scheme of reservation adopted by the first respondent-State pursuant to the Reservation Act, so far as residents of Uttarakhand are concerned though they are being treated as socially and educationally backward citizens, reservations for them in medical colleges in the State of U.P. are being continued from year to year and that the said action of the respondent-State is totally arbitrary and unconstitutional. Consequently the first respondent should be directed to make available the scheme of reservation for Uttarakhand residents without any time limit so long as statutory scheme of 27 per cent reservation for socially and educationally backward class of citizens as per the Reservation Act continues to operate in the State.

2. Even though residents of Uttarakhand, as held by this Court, are to be treated socially and educationally backward citizen, so far as admissions in agricultural courses are concerned that benefit is not being extended to them, though the same class of citizens is granted such benefit periodically, that is, from year to year so far as admissions in medical courses are concerned and that this act on the part of the State is highly discriminatory and unreasonable and is also unconstitutional.

3. Despite the operative statutory scheme of reservation as per the Reservation Act, benefit of 27 per cent reservation for socially and educationally backward of citizens is not made available to resident of Uttarakhand so far as Government services are concerned. The said act of

A the first respondent amounts to denial of equal opportunity to this class of citizens and is, therefore, unconstitutional.

B Learned senior counsel for the first respondent-State Shri Rohtagi on the other hand tried to resist these contentions and submitted that the statutory scheme of 27 per cent reservation for socially and educationally backward class of citizens is available to the whole class of citizens of U.P. whether they are residing in plains or in hills of Uttarakhand region and that it is true that the State has treated residents of Uttarakhand as socially and educationally backward class of citizens pursuant to the decisions of this Court, but the residents of Uttarakhand cannot be treated to be socially and educationally backward for all times to come. However so long as they are so treated by the State the benefit of 27 per cent reservation will be available to them along with their counterparts residing in the plains. That it has been decided by a Constitution Bench of this Court in *Indra Sawhney and Others v. Union of India and Others*, [1992] Supp. 3 SCC
C 217 that policy of reservation has to be operated yearwise and there cannot be any such policy in perpetuity. Therefore, the eligibility of residents of Uttarakhand for being treated as socially and educationally backward class of citizens can be reviewed by the State from year to year and that upto year 1997 residents of Uttarakhand have been treated by the State of U.P. as socially and educationally backward class of citizens who would be entitled to be included in the category of citizens to whom 27 per cent reservation is available so far as medical education is concerned. However, for admission to agricultural courses the State is going to decide shortly as to whether that benefit should be made available to the Uttarakhand residents. It is also submitted that for Government services also benefits of reservation of 27 per cent is uniformly made available to all the citizens of the State of U.P. who may fall within the class of socially and educationally backward citizens. So far as Uttarakhand residents are concerned even thought they may fall in the same class they cannot be given entire 27 per cent of reservation. Reservation to be given to them wholly depends upon the proportionate percentage of population residing in Uttarakhand areas as compared to their counterparts residing in plains. Mr. Rohtagi, however, made it clear that if any resident of Uttarakhand satisfies the requirement of being treated as socially and educationally backward citizen he would naturally be entitled to be considered for reservation in the quota of 27 per cent reservation for socially and educationally backward class of citizens
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H residing in U.P. and that such benefit is already available to all such

similarly situated citizens in the State and hence the grievance of the petitioners that they are being discriminated against is mere imaginary than real. A

In the light of the aforesaid rival submissions we now proceed to deal with triple contentions raised by learned senior counsel for the petitioners Shri Satish Chandra. B

Contention No. 1

As we have noticed earlier during the pendency of this writ petition it has transpired that the first respondent has not only continued the statutory scheme of reservation of 27 per cent for educationally and socially backward class of citizens of U.P. as per the Reservation Act, but Government Orders have also been issued from time to time from 1995 to 1997 clearly indicating that residents of Uttarakhand region are being treated as socially and educationally backward class of citizen presumably in the light of two decisions of this Court to which we will make a reference shortly. Secretary, Government of U.P., Ramesh Yadav, by communication dated 6th November, 1995 addressed to Vice Chancellor, G.B. Pant Agricultural & Technological University, Pant Nagar, has observed that 'the Hon'ble High Court on the basis of *State of U.P. v. Pradip Tandon*, AIR (1975) SC 563 has held that the residents of Uttarakhand be treated as socially and educationally backward classes of citizens and in the background of the abovementioned judgments of the Hon'ble Supreme Court and High Court the Government of U.P. after proper and due consideration, has decided that all residents of Uttarakhand excluding scheduled caste and scheduled tribe who are already covered by reserve quota; will be added to the list of other backward classes for the purpose of reservation. Accordingly in view of the all India status of your university you are directed to admit all non-scheduled caste and non-schedule tribe candidates of Uttarakhand, within the quota fixed for backward classes on merit, alongwith the candidates of other districts which will not exceed 27 per cent'. C
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As the aforesaid policy decision of the first respondent-State communicated to the Vice Chancellor was based on the decision of this Court rendered almost two decades back in *State of U.P. v. Pradip Tandon & Ors.* (supra) it will be profitable at this stage to refer to that decision. In the said case a Bench of three learned Judges of this Court had to consider whether the scheme of reservation of seats in medical colleges in favour of G
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A hill and Uttarakhand areas of State of U.P. was sustainable as per Article 15(1)(4) and Article 29(2) of the Constitution of India. Upholding the said scheme on 19th November 1974 this Court speaking through Chief Justice Ray observed as under :

B "The hill and Uttarakhand areas in Uttar Pradesh are instance of socially and educationally backward classes of citizens for these reasons. Backwardness is judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the element of special backwardness is observed. When effective territorial specialisation is not possible in the absence of means of communication and technical processes as in the hill and Uttarakhand areas the people (residing there sic) are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people.

E Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttarakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education."

G It is, therefore, obvious that residents of hills and Uttarakhand areas were treated as socially and educationally backward classes of citizens entitled to benefit under Articles 15(1), 15(4) and 29(2) of the Constitution in the year 1974 when this Court decided that case. But simply on this basis it cannot be urged that this class of citizens could be condemned as socially and educationally backward class of citizens till eternity, however, much they may like to be stigmatized as educationally and socially backward class of citizens. This class is always required to be judged in the light

of the existing fact situation at a given point of time. There cannot be a class of citizens which can be treated perpetually to be a socially and educationally backward class of citizens. Every citizen has right to develop socially and educationally. We must, therefore, hold that the aforesaid decision of this Court ruled that residents of Uttarakhand and hill areas of State of U.P. in 1974, when the matter was decided, formed a socially and educationally backward class of citizens. Consequently, they would be automatically entitled at that point of time to any existing scheme of reservation promulgated by the State for socially and educationally backward classes of its citizens. Mr. Rohtagi, learned senior counsel for respondent No. 1, was right when he contended that such backwardness cannot continue indefinitely and the State is entitled to review the situation from time to time.

However, this does not advance the case of first respondent- State on the facts established on record. We have noted earlier that as late as in 1995 the first respondent-State took a policy decision in its wisdom, even after the expiry of two decades since the decision of this Court in *Pradip Tandon's* case (supra) was rendered, that the residents of Uttarakhand and hill region were still required to be treated as socially and educationally backward class of citizens as clearly reflected by the letter of Shri Ramesh Yadav, Secretary, Government of U.P. Even thereafter till 1997 that is current year the first respondent has treated the residents of Uttarakhand and hill region as socially and educationally backward classes of citizens. The said decision of the first respondent-State is reflected by the communication dated 27th February, 1996 addressed by Secretary to the Director General, Medical Education and Training, U.P. Lucknow. The said communication relied upon the judgment of this Court rendered in the case of *Anil Kumar Gupta v. Government of U.P.* (supra). As we will see hereinafter, in the said decision this Court endorsed the earlier view of this Court in *Pradip Tandon's* case (supra) that Uttarakhand residents were socially and educationally backward class of citizens. The relevant recitals in the said communication read as under :

"2. I am also directed to state that Hon'ble Supreme Court in their observation made in writ No. Civil 276/1995 (copy attached), Civil No. 326/95 *Anil Kumar Gupta etc. v. Government of U.P. etc.*, has directed that the Horizontal Reservation be compartmentalised i.e. number of reserved seats for the Test for each reserved category

A of SC/ST/BC General be mentioned in the Brochure.

3. The Government has also decided that for the Horizontal Reservation of each category, the number of seats be compartmentalised as under :

B	Scheduled Caste	- 21 percent
	Scheduled Tribe	- 02 percent
	Other Backward Classes	- 27 Percent
C	General Category	- 50 percent.

The total seats be divided and mentioned as above for CPMT 1996 Brochure for the necessary action."

D The very same Secretary to Government of U.P. has reiterated the same policy being continued for the year 1997 as per the communication dated 8.1.97 addressed to Director General of Medical Education and Training, U.P. Lucknow. The pertinent recitals read as under :

E "In continuation to G.O. No. 5198 Sec. 14/Five- 96-26/96 dated 19.12.96, I am directed to state that order was issued regarding providing reservation to various categories for C.P.M.T. 1996 vide G.O. No. 1067/Sec.-14/Five-96-111/93 T.C. dated 27.2.96. The Govt. has after due consideration, decided to enforce the above provision in CPMT 1997 also."

F It becomes obvious that the aforesaid recitals found in the letters dated 27.2.96 and 8.1.97 clearly indicate that the first respondent-State relying on the decision of this Court in *A.K. Gupta's* case (supra) has continued reservation of 27 per cent for Other Backward Classes including residents of hill and Uttarakhand areas, for the years 1996 and 1997 so far as admissions to medical courses were concerned.

G It is useful at this stage to refer to the decision of this Court in *Anil Kumar Gupta's* case (supra). In the said decision a Bench of two learned Judges of this Court speaking through B.P. Jeevan Reddy, J., relying upon the decision of this Court in *State of U.P. v. Pradip Tandon* (supra) as well as Constitution Bench decision in *Indra Sawhney and Others* (supra) reaf-

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 firmed the position in para 9 of the report to the effect that residents of hill areas and Uttranchal in State of U.P. were covered by the scheme of reservation as per Article 15(4) of Constitution of India, that is, they were entitled to the reservation as socially and educationally backward classes of citizens. But this reservation available to them would be under the quota of 27 per cent reservation for socially and educationally backward classes of citizens and they could not get additional benefit of reservation under Article 15(1) as wrongly assumed by the State in their favour.

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 A conjoint reading of the decision in *A.K. Gupta* (supra) and the letters dated 27.2.96 and 8.1.97 of Secretary as noted earlier leaves no room for doubt that according to the first respondent-State the residents of hill areas and Uttarakhand in State of U.P. were entitled to be treated as socially and educationally backward class of citizens and were accordingly entitled to be considered for reservation of seats in medical colleges against 27 per cent reservation quota available to that class of citizens. Once that conclusion is reached the first contention of learned senior counsel for the petitioners loses much of its efficacy as till the current year, according to the first respondent-state, residents of Uttarakhand region and hill areas are being treated as socially and educationally backward classes of citizens who would obviously be entitled to be considered along with other citizens falling in this class towards grant of 27 per cent reservation in medical colleges.

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 It is, however not possible to agree with the contention of learned senior counsel for the petitioners that such reservation should continue without any limitation or there cannot be periodical review about the said reservation policy. It is true as per the statutory scheme of reservation as envisaged by the Reservation Act, 27 per cent reservation for educationally and socially backward classes of citizens in the State of U.P. in all Government services and educational institutions has to be continued so long as this statutory scheme of reservation continues in the State. But that does not solve the problem for the petitioners for all times to come. It is true that from 1974 onward till today residents of Uttarakhand hills region are being treated by the State of U.P. as socially and educationally backward class of citizens for the purpose of being considered eligible for consideration towards 27 per cent reservation. But only on that score, it cannot be predicated that in future they may not cease to be socially and

- A educationally backward. Once at any further point of time they cease to be so they will obviously go out of the umbrella of 27% reservation available to the remaining socially and educationally backward classes of citizens in the State of U.P. Therefore, even though the statutory scheme for 27% reservation envisaged by the Reservation Act may continue to cover
- B socially and educationally backward category of citizens in State of U.P., Uttarakhand residents may cease to be treated as socially and educationally backward classes of citizens in future, if relevant data is available in that connection by that time. We, therefore, cannot bind down the first respondent-State to treat Uttarakhand residents as socially and
- C educationally backward classes of citizens for all times to come. Even learned senior counsel Shri Satish Chandra also agreed that such a situation cannot be countenanced. But in his submission once the statutory scheme of 27 per cent reservation for socially and educationally backward classes of citizens continues, Uttarakhand residents must be made available
- D the umbrella of that reservation which should run parallel to and be coterminous with the reservation scheme available under the Reservation Act to the extent of 27 per cent reservation for socially and educationally backward classes of citizens. It is not possible to agree with this contention. Reason is obvious. The statutory scheme of reservation of 27 per cent for socially and educationally backward classes of citizens may continue
- E indefinitely till the Reservation Act continues to operate. Still a given category of citizens which may form a part and parcel of that class of citizens, namely, socially and educationally backward classes of citizens as on date may in future cease to belong to that class. Consequently the question whether a given category of citizens continues to be socially and
- F educationally backward class of citizens at a given point of time or not has to be left to the State concerned for its objective decision from time to time. The State cannot be bound in perpetuity to treat such classes of citizens for all times as socially and educationally backward classes of citizens. The principle of 'once a mortgage always a mortgage' cannot be
- G pressed in service for submitting that once a backward class of citizens, always such a backward class. In other words it is open to the State to review the situation from time to time and to decide whether a given class of citizens that has earned the benefit of 27 per cent reservation as socially and educationally backward class of citizens has continued to form as part
- H of that category or has ceased to fall in that category. Thereby it cannot be

said that the first respondent is adopting a policy which is contrary to the constitutional scheme of reservation. Within four corners of Article 15(4) or 16(4) such an exercise cannot be said to be unauthorised. Such an exercise has been upheld by the Constitution Bench of this Court in *Indra Sawhney and Others v. Union of India and Others* (supra). In the said decision at page 559 in concurring judgment Sawant, J. in para 531 observed as under: A

"The validity of the percentage of reservation for backward classes would depend upon the size of the backward classes in question. So long as it is not so excessive as to virtually obliterate the claims of others under Clause 16(1), it is not open to challenge. However, it is not necessary, and Article 16(4) does not suggest, that the percentage of reservation should be in proportion to the percentage of the population of the backward classes to the total population. The only guideline laid down by Article 16(4), as pointed out elsewhere, is the adequacy of representation in the services. Within the said limits, it is in the discretion of the State to keep the reservations at reasonable level by taking into consideration all legitimate claims and the relevant factors. In this connection, the law laid down directly on the subject in the following decisions is worth recounting." B

At para 814 at page 736-737 in the main majority decision B.P. Jeevan Reddy, J., indicated the legal position as under : C

"... It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provisions being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be." D

The first respondent is, therefore, bound to act and is entitled to act as per the modalities for the scheme of reservation as envisaged by the Constitution Bench judgment of this Court. The first contention of learned senior counsel for the petitioners, therefore, has to be decided by holding that the E

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- A first respondent is bound to treat the residents of Uttarakhand and hill areas as socially and educationally backward class of citizens all throughout from 1974 till date, in the light of its own policy decision reflected by the above referred communications issued by the Secretary of the U.P. State from time to time. However it is open to the first respondent to review the situation from time to time and to take its own policy decision in the light of relevant material available to it in future as to whether residents of Uttarakhand and hill region have continued to remain socially and educationally backward class of citizens for earning the statutory benefit of 27% reservation envisaged by the Reservation Act or have ceased to belong to that reserved category of citizens. Such an exercise is perfectly legitimate and permissible to the first respondent and hence it is not possible to agree with the learned senior counsel for the petitioners that reservation for citizens of hill regions must be made available to them without any limitation of time so long as Reservation Act remains on the Statute Book. The first contention is decided accordingly.

D *Contention No. 2*

- So far as this contention is concerned, learned senior counsel for the petitioners was right when he submitted that when the first respondent itself decided that for the year 1997 the residents of hills and Uttarakhand areas were to be considered as socially and educationally backward class of citizens and, therefore, they were to be considered towards 27 per cent reservation available to such class of citizens, while considering their claim for admissions to medical colleges in the State, it is difficult to appreciate how for the very same class of citizens this benefit of reservation was not made available when students coming from that regions were to be considered for admission to agricultural colleges. Learned senior counsel for the State could not successfully controvert this contention. It is obvious that when the State itself in its wisdom has considered residents of the aforesaid areas as socially and educationally backward for being included for consideration towards 27 per cent reservation available to that class for admission in medical college, afortiori they have to be considered eligible for being included in this said quota of reservation of 27 per cent, while considering their claims for admission to agricultural colleges. The stand of the respondent- State that it is still considering their claims for such reservation to agricultural college for the year 1997, to say the least, is totally inconsistent and nothing short of being treated as arbitrary and

illegal. However, this conclusion of ours cannot give any substantial benefit to the petitioners as the admissions to agricultural colleges for current year are already finalised. All that we can direct is to the effect that if in future for the year 1998 onwards, State takes a decision that residents of Uttarakhand and hill regions of the State are to be still considered as socially and educationally backward class of citizens for these relevant years, then for the academic year concerned the State must take a prompt decision in this connection at least three months prior to starting of academic terms for medical and other educational courses including agricultural education to be imparted in the Government institutions in the State and such decision should be properly published in newspapers having wide circulation in the concerned regions of the State so that residents staying in those regions can know well in advance about the approved policy of the State in this connection. It is obvious that such a decision has also to be properly and promptly conveyed to all authorities, concerned with the imparting of education in different colleges situated in the State and who are required to follow the Policy of reservation as envisaged by the State. Such a decision to be taken by the State in future years should be uniformly applied to all types of academic education courses not merely confined to medical courses conducted at Government colleges and other institutions covered by the reservation scheme for admissions. Under these circumstances no useful purpose can now be served in voiding the decision reflected in the letter dated 24th July, 1997 of Shri Jagan Nath Tewari, Under Secretary, Government of U.P. addressed to Shri R.B. Mishra, Advocate-on-Record, Supreme Court of India, to the effect that the matter is still under consideration and no final decision has yet been taken in connection with reservation facilities to be provided to residents of Uttarakhand in various educational courses of Pant Nagar Agriculture University to be extended for the year 1996-1997. We, however, hold that the aforesaid stand taken in this letter was clearly unjustified once the State decided to treat residents of Uttarakhand and hill region as socially and educationally backward class of citizens for getting the benefit of being included in quota of 27 per cent reservation in medical colleges for the year 1997. The second contention, therefore, is found to be well sustained, though it cannot result in further directions to the State for the current year 1996-97. It stands accepted to the limited extent, by directing the first respondent-State to regulate its future course of action for years 1997-98 onwards as indicated hereinabove.

A Before parting with the discussion on this contention we may refer to decisions of this Court to which our attention was invited by the learned senior counsel for the petitioners. *D.S. Nakara & Others v. Union of India*, [1983] 2 SCR 165; *Superintending Engineer, Public Health, U.T. Chandigarh & Ors. v. Kuldeep Singh & Ors.*, JT (1997) 2 SC 509 and *Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Coop. Society and Others v. Haribhai Mevabhai and Others*, [1996] 10 SCC 320 were pressed in service by Shri Satish Chandra, learned senior counsel, for submitting that grant of reservation under Article 15(4) and 16(4) was a constitutional obligation of the State and it was a power coupled with duty. Reference made by him to these judgment is not strictly relevant in the present context as the first respondent-State itself has already discharged its constitutional obligation by enacting the Reservation Act and by promulgating the policy of reservation for socially and educationally backward citizens of Uttarakhand by affording them the right of inclusion towards 27 per cent reservation quota upto 1997. Consequently, it is not necessary for us to examine the wider question as to whether the State will be bound to follow any policy of reservation if it finds that it is not necessary to follow the same in a given set of circumstances and whether such a policy cannot be enforced against the State by a court or law.

E *Contention No. 3*

F So far as this contention is concerned learned senior counsel for the first respondent-State made it clear to us that the State of U.P. has considered the claim of residents of Uttarakhand for being included in the category of socially and educationally backward class of citizen while computing 27 per cent reservation for such class of citizens even in Government services. He has invited our attention in this connection to paragraph 11 of the counter affidavit of behalf of the State of U.P. filed by Shri C.K. Tewary, Special Secretary, Uttarakhand Vikas Vibhag, U.P. It has been recited therein that 'it is noteworthy that the population of hill/Uttarakhand area is approximately 4% of the total population of Uttar Pradesh. As against this, the representation of residents of hill/Uttarakhand area in various important service is mentioned in sub-para (a) to (i) of the said paragraph'. He further stated that 'it is noteworthy that the Hon'ble Supreme Court in its landmark judgment in the Indra H Sawhney case has stipulated 27% reservation as adequate representation

for other backward classes, which constitutes 52% of the total population of the Country. Thus, using the same logic around 2% representation in the State services would be adequate representation for people belonging to hill/Uttarakhand area, since the population for this area is 4% of the total population of the State. It can be seen from the details given above that in all services mentioned above, the representation of people from hill/Uttarakhand area is more than 2% and in most cases is much above 4%. In some services, in fact, the representation of hill/Uttarakhand area is more than double the percentage of their population to the total population of the State'.

Relying on the aforesaid assertion it was submitted by learned senior counsel for the first respondent-State that towards the 27 per cent reservation in Government services available to socially and educationally backward classes of citizens in State of U.P., the resident of hill and Uttarakhand region also are included. The whole State has been taken as a unit and on the basis of the comparative density of population in the hill regions vis-a-vis remaining parts of the appropriate and proportionate reservation out of 27 per cent quota is made available to socially and educationally backward residents of hill areas and Uttarakhand areas. Therefore, the policy of the reservation even so far as Government services are concerned is also made available to the residents of this area by treating them as socially and educationally backward classes of citizens. In view of aforesaid stand taken by the learned senior counsel for the respondent, which could not be factually controverted by the petitioners, it becomes obvious that the policy of reservation of 27 per cent for socially and educationally backward classes of citizens as envisaged by the Reservation Act has enured for the benefit of the residents of Uttarakhand and hill regions also. Therefore, it cannot be said that the said benefit is not available to the residents of this region as erroneously assumed by the learned senior counsel for the petitioners. The third contention is not well sustained factually and, therefore, has to be rejected.

As a result of the aforesaid discussion it must be held that except contention No. 2, learned senior counsel for the petitioners has not been able to sustain any of the other contentions raised in support of the petition and so far as Contention No. 2 is concerned, as discussed earlier, the only limited relief which could be given to the petitioners is as indicated while considering the said contention.

- A** In the result this petition stands partly allowed in aforesaid terms, namely, that if the residents of Uttarakhand and hill region are to be treated as a socially and educationally backward class of citizens for a given year, in future, such decision should be taken by the State well in advance and should be published at appropriate time as indicated by us while deciding Contention No. 2, hereinabove. There will be no orders as to costs.
- B**

V.M.

Petition partly allowed.