

2007 S C M R 410

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan, Muhammad Nawaz Abbasi and Saiyed Saeed Ashhad, JJ

Miss SHAZIA BATOOL----Appellant

Versus

GOVERNMENT OF BALOCHISTAN and others----Respondents

Civil Appeal No.436 of 2004, decided on 3rd November, 2006.

(On appeal from the judgment, dated 2-10-2002 of the High Court of Balochistan, Quetta passed in C.P. No.137 of 2002).

Per Saiyed Saeed Ashhad, J.; Sardar Muhammad Raza Khan, J. agreeing [Majority view]---

(a) Prospectus of Bolan Medical College, year 2000-2001---

---Paras. 3, 4, 7, 10 & 23---Constitution of Pakistan (1973), Arts.2-A, 22, 25, 37 (c) & 185 (3)--Leave to appeal was granted by Supreme Court to consider; whether incorporation of clauses 3, 4, 7, 10, 23 and introduction of classification between candidates of Quetta Urban and Quetta Rural in Prospectus of Bolan Medical College, Quetta were discriminatory, violative of provisions of Arts.2-A, 22, 25 and 37(c) of the Constitution and law laid down by Supreme Court; and whether it was necessary for candidate to implead in constitutional petition all other candidates who had secured lesser marks than him and were admitted to M.B.,B.S. First Professional Examination course, on quota basis.

Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 rel.

(b) Prospectus of Bolan Medical College (2000-2001)---

---Paras. 3, 4, 7, 10 & 23---Constitution of Pakistan (1973) Arts.2-A, 22, 25 & 37(c)---Educational institution---Admission to medical college---District-wise quota---Grievance of candidate was that district wise quota and reservation of seats for certain classes of students as mentioned in paras.3, 4, 7, 10 and 23 of Prospectus of Bolan Medical College (2000-2001) was violative of the provisions of the Constitution---Validity---Distribution of merit seats amongst districts/agencies and classification on the basis of disability, reciprocal basis, reservation for foreign nationals and for backward and underdeveloped regions would be deemed to have been done with a view to provide better and equal opportunities to the students of backward and underdeveloped areas of districts / agencies and regions---No deserving student was deprived under paras. 3 and 4 of Prospectus of Bolan Medical College (2000-2001), from being admitted to medical college, thus those paras were not repugnant/violative of Arts.2-A, 22, 25 & 37(c) of the Constitution---Minimum qualification for a candidate's admission to M.B.,B.S./B.D.S. classes, under para. 23 of Prospectus of Bolan Medical College (2000-2001) was Intermediate Science (pre-medical) examination from Board of Intermediate and Secondary Education, Balochistan, Quetta or any recognized Board or University and such para was also not repugnant to or violative of Arts.2-A, 22, 25 or the Constitution---High Court had rightly dismissed Constitutional petition of the candidate and no ground was made out for interference with the judgment---Appeal was dismissed.

Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218; Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 and The Chairman, Selection Committee, Bolan Medical College, Quetta and others v. Miss Safia Hameed and others 1979 SCMR 529 rel.

Per Muhammad Nawaz Abbasi J.---

(c) Constitution of Pakistan (1973)---

---Art. 25---Reasonable classification---Necessary ingredients Principle of equity is subject to reasonable classification, Which means that it should be based on intelligible differentia, which distinguishes persons or things that are grouped together from those which have been left out and that the differentia must have rational nexus to the object sought to be achieved by such classification.

(d) Constitution of Pakistan (1973)---

--Art. 25--Equal protection of law--Principles--Concept of equal protection of law envisages that a person or class of persons should not be denied the rights, which are enjoyed by other persons in the same situation.

(e) Constitution of Pakistan (1973)---

--Art. 25--Equality of citizens--Principle of reasonable classification--Applicability--Reasonable classification must be based on an intelligible differentia, which distinguishes individuals or one group of persons from other group in a particular set of circumstances--Reasonable classification must be found on reasonable basis and must have rational nexus to the object sought to be achieved by such classification--General presumption is of constitutionality of the principle regarding reasonable classification but no such presumption can be carried if there is nothing on the face of law and surrounding circumstances on the basis of which reasonableness of classification can be regarded.

Per Muhammad Nawaz Abbasi, J. Contra [Minority view] ---

(f) Prospectus of Bolan Medical College (2000-2001)---

--Paras. 3, 4, 7, 10 & 23--Constitution of Pakistan (1973), Arts. 2-A, 22, 25 & 37(c)--Educational institution--Admission to medical college--District-wise quota--Intelligible differentia, principle of--Applicability--Grievance of candidate was that District-wise quota and reservation of seats for certain classes of students as mentioned in paras.3, 4, 7, 10 and 23 of Prospectus of Bolan Medical College (2000-2001) was violative of the provisions of the Constitution--Validity--Classification on the basis of intelligible differentia must be reasonable and must have nexus with the object sought to be achieved--Reservation of seats in Medical Colleges for every district without any justification in law was in disregard to the merit policy, which was neither in consonance with the natural justice as ordained by the Holy Qur'an and Sunnah nor in the spirit of Art.25 of the Constitution--Prospectus of Bolan Medical College (2000-2001) provided a specific quota allocated for each district in preference to open competition of seats to the ratio of 70% and 30% without any distinction and District-wise distribution--District-wise allocation of seats would only be justified if every district of Province of Balochistan would have been declared and notified by Government as backward area--Division of District Quetta into rural and urban and separate allocation of seats for Quetta rural and Quetta urban was without any justification--Allocation of seats for each District of Balochistan might have some political or other reason but it was not based on the principle of

reasonable classification--Fixation of District-wise quota in the Prospectus had neither any nexus with the actual state of affairs nor was in the spirit of Arts.22(4) and 25 of the Constitution--General policy of allocating seats for each district of the Province was against the law laid down by Supreme Court and also being not based on intelligible differentia, was in conflict with the principle of equality as well as the rule of open merit in consequence of which students who had secured the highest marks in the open merit list were deprived of their legitimate rights--Candidate was allowed to get admission in next session on open merit--Appeal was allowed.

Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 rel.

Appellant in person.

Amanullah Tareen, Additional Advocate-General, Balochistan, Quetta, Kamran Murtaza, Advocate Supreme Court, Raja Abdul Ghafoor, Advocate-on-Record Manzoor Hussain, Additional Secretary, and Abdul Malik, Principal, Bolan Medical College for Respondents.

Date of hearing: 6th May, 2005.

JUDGMENT

SAIYED SAEED ASHHAD, J.--- This appeal by leave of the Court is directed against the judgment of the Balochistan High Court, dated 2-10-2002 whereby appellant's petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

2. Brief facts of the case are that the appellant passed Intermediate Science examination in medical group in the year 2000 and applied for admission in Bolan Medical College, against a seat reserved for District Quetta. According to the marks obtained by her, she did not come within the quota of seats allocated for District Quetta. The appellant submitted that 75 students who had secured lesser marks than her were provided admission in Bolan Medical College on the basis of District-wise quota of medical seats available in the Province of Balochistan. The appellant further submitted that had the concerned authority for the purpose of admission to Bolan Medical College laid down or framed a policy on

Provincial merit basis solely without making any allocation or distribution of seats for the districts/various agencies or reservation of seats against various quotas, then she would have secured admission in Bolan Medical College as she was placed at Serial No.74 of the merit list on all Balochistan basis and at Serial No.34 of the merit list of Quetta District prepared on District basis. As the appellant did not succeed in obtaining admission in Bolan Medical College, she filed constitutional petition with the following reliefs:--

(a) That the provisions 3, 4, 7 and 10 of the Prospectus of B.M.C. Quetta for the Session 2000-2001 are liable to be struck down being unreasonable and discriminatory and un-Islamic and un constitutional.

(b) That the bifurcation of M.B.,B.S. seats allocated to Quetta District into Quetta Urban and Quetta Rural is unreasonable and illegal and prayed to be declared as such.

(c) That the respondents 5, 6 and 7 are admitted illegally and without entitlement by the unlawful authority.

(d) That the petitioner is entitled for admission to First Year M.B.,B.S. Class of B.M.C. Quetta for the Session 2000-2001 under every circumstances on open merit seats or District merit seats or on compensatory grounds as an exceptional case.

(e) That the clauses (3), (4), (7) and (10) of the Prospectus may be reviewed as the inter alia laid down by the decisions and judgments of superior Courts and provisions of the Constitution.

(f) That P.M.D.C. Regulations may be followed by the B.M.C. in order to maintain the standard of medical education at par with the other medical institutions.

(g) That the petitioner may be granted interim relief by allowing her provisional admission in First Year M.B.,B.S. class pending disposal of this amended petition on merits.

(h) That officials respondents may be directed that in future they must start the process of M.B.B.S. admission just within the three months after the announcement of F.Sc. result by Balochistan Board,

(i) Any other relief which this Honourable Court may deem fit and proper under the circumstances of the case may be granted in the

interest of justice and equity and fairplay."

3. A learned Division Bench of Balochistan High Court vide judgment dated 2-10-2002 dismissed the constitutional petition. Feeling aggrieved and dissatisfied with the impugned judgment of the High Court, the appellant filed Civil Petition No.71-Q of 2002 which was allowed vide order, dated 11-5-2004 and leave to appeal was granted, inter alia, to consider the following questions:--

(j) Whether the incorporation of clauses 3, 4, 7, 10, 23 and introduction of classification between candidates of Quetta Urban and Quetta Rural of the Prospectus of Bolan Medical College, Quetta were discriminatory, violative of provisions of Arts.2-A, 22, 25 and 37(c) of the Constitution of Islamic Republic of Pakistan and the impugned law laid down by this Court in the cases of Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163.

(k) Whether it was necessary for the petitioner to implead, in the writ petition all other candidates who had secured lesser marks than him and were admitted to M.B.B.S. First Professional Examination course on quota basis."

4. We have heard the arguments of the appellant who was represented by his attorney/father Dr. Imdad Hussain, Mr. Amanullah Tareen, Additional Advocate-General on behalf of Government of Balochistan, and Mr. Kamran Murtaza, Advocate Supreme Court on behalf of the Principal of Bolan Medical College.

5. Dr. Imdad Hussain, attorney of the appellant at the very outset submitted that allocation of distribution of seats in Bolan Medical College on the basis of Districts and Agencies or on any other basis and further that reservation of seats under various quotas was against the provisions of the Constitution and natural justice as it amounted to deprive a citizen of his right to acquire education as per his or her choice which was the duty of the Government to guarantee such right to every citizen by formulating or providing an admission policy according to which admissions to Medical Colleges ought to be given solely on the basis of merit list to be provided on Provincial basis without allocation/distribution of seats to the districts or agencies or classification on the basis of students in different categories which would result in depriving

meritorious and good students from admission and enable average or below average students to obtain admissions, consequently resulting in deterioration and diminishing the standard and quality of the Doctors and medical profession. According to him, this would be harmful, damaging and cause immense hardships and problems to the public-at-large. In view of his above arguments, he submitted that the provisions of paragraphs 3, 4, 7 and 10 of the Prospectus of Bolan Medical College, Quetta for admission for the Session 2000-2001 were liable to be struck down being unreasonable, discriminatory, un-Islamic and un-constitutional as they were in clear violation of Articles 2-A, 22, 25 and 37-C of the Constitution of Islamic Republic of Pakistan and the law laid down by this Court.

6. Learned Additional Advocate-General, Balochistan fully supported the judgment of the Balochistan High Court and submitted that paragraphs 3, 4, 7, 10 and 23 of the Prospectus for the Session 2000-2001 were neither violative or contrary to the provisions of Articles 2-A, 22, 25 and 37-C of the Constitution nor offended the pronouncements or the principles laid down by this Court in the case of Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161, (ii) Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and (iii) Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163.

7. Mr. Kamran Murtaza, Advocate Supreme Court appearing on behalf of Bolan Medical College adopted the arguments of the learned Additional Advocate-General and specifically drawn our attention to the case of Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 wherein distribution/allocation of seats in the medical Colleges for various districts/agencies and classification or categorization of candidates made with a view to provide better opportunity to the underdeveloped or backward areas of a Province with a view to enable them to have access to higher education was held to be in no way contrary or in conflict with the provisions of Articles 2-A, 22, 25 and 37-C of the Constitution and further that a reasonable classification as well as allocation or distribution of seats on District/Agencies basis would be permissible.

8. In order to fully appreciate the arguments of the attorney of the appellant and to find out whether the paragraphs of the Prospectus referred to above violate the afore-stated Articles of the Constitution as well as the pronouncements made by this Court in afore-stated cases, it will be appropriate to reproduce paragraphs 3, 4, 7, 10 and 23 of the

Prospectus as well as Articles 2-A, 22, 25 and 37-C of the Constitution as under:--

Paragraphs of the prospectus

3. The break up of Medical seats of Bolan Medical College Quetta for the Session 2000-2001 shall be as under:--

(a) District Merit Seats	103
(b) Provincial Merit Seats	10
(c) Reserved seats for:-	
(1) Disabled persons of Balochistan	1 seat
(2) Foreign National (Nomination are placed on the Discretion of Economic Affairs Division Islamabad Irrespective of any nationality)	18 seats
(3) FATA	7 seats
(4) Azad Kashmir	6 seats
(5) Northern Area	1 seat
(5) Total	146 seats

4. The District Merit Seats of Bolan Medical College are distributed among the 22 Districts/Agencies of Balochistan on population basis as per report of Census Commission of Pakistan. The population figure of Districts/Agencies are in accordance to the existing boundaries of the districts/agencies.

The allocation of seats to various Districts/Agencies is as under:-

S.No.	Name of the	Population		Allocation of seats
1.	Quetta District	7,59,245	8.81	=10 seats
2.	Pishin	3,67,183		=5 seats
3.	Killa Abdullah	3,70,280		=4 seats
4.	Chagai	2,02,564	2.78	=3 seats
5.	Loralai	4,95,156	8.91	=10 seats
6.	Zhob	3,75,142	4.94	=5 seats
7.	Killa Saifullah	1,93,553	3.05	=3 seats
8.	Naseer Abad	6,78,711	8.93	=9 seats
9.	Kachhi	3,67,997	8.44	=7 seats
10.	Sibi	2,10,398	2.27	=2 seats
11.	Ziarat	73,340	.71	=2 seats
12.	Kohlu	99,845	2.45	=2 seats
13.	Dera Bugti	1,81,310	1.67	=2 seats

14.	Kalat	2,37,834	4.90	=5 seats
15.	Mastung	1,99,645	3.09	=3 seats
16.	Khuzdar	4,17,466	5.62	=6 seats
17.	Awaran	1,18,173	2.37	=2 seats
18.	Lesbella	3,12,995	4.33	=4 seats
19.	Kharan	2,06,909	2.99	=3 seats
20.	Kech	4,13,294	8.76	=9 seats
21.	Punjgur	2,34,051		=4 seats
22.	Gawadur	1,85,498		=3 seats
	Total	65,65,189		103 seats

7. All seats in the above Districts/Agencies are open for competition within each District to the Local/domicile candidates of the Province of Balochistan and nobody shall be denied admission on the grounds of race, religion, colour or cast. Competition in each District/Agency shall take place between the candidates of that District/agency in the following manners:--

(a) 70% seats shall be allocated to those candidates who got their education (matric and F.Sc.) from outside their native District.

(b) 30% seats shall be allocated to those candidates who got their education (matric and F.Sc.) from their native District.

(c) Wherever the reserved seats are only 2, these seats shall be allocated on 50% basis.

(d) if the distribution of seats are not in whole figures, but fractions, the benefit of fraction .0 to .5 would go to the students who have acquired education within the District and conversely benefit of fraction .5 to .9 would go to students who have education outside their native District.

(e) In case a candidate has acquired his/her education from two different districts, his/her case shall be decided by the Selection Committee.

(f) Whereby the candidates from Quetta District shall be allocated only on merit basis.

10. The selection of candidates against the three seats in the Fatima Jinnah Medical College for Girls, Lahore shall be made by the Selection Committee from amongst the eligible girl candidates of the Province in the following manners:

(a) Quetta, Pishin, Killa Abdullah, Chagai, Sibi, Ziarat, Kohlu, Dera Bugti, Zhob, Killa Saifullah, Loralai (excluding the Provincially Administered Tribal Areas). One seat.

(b) Kalat, Mustung, Khuzdar, Lasebella, Kharan, Awaran, Kech, Punjgur, Gwadur, Naseerabad, Kechhi. One seat

(c) Provincially Administered. Tribal Areas of' Balochistan namely (1) Dallbandin Tehsil of Chagai District (2) Zhob, Killa Saifullah, Loralai District (excluding Dukki Tehsil) (3) Kohlu Agency Dera Bugti Agency. One seat.

Articles of the Constitution

Article 2-A. The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly.

Article 22. (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law,

(a) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(3) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

Article 25. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(4) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 37 (c) Make technical and professional education generally available and higher education equally accessible to all on the basis of merit;

9. From a bare reading of paragraphs 3, 4, 7, 10 and 23 of 'the Prospectus for admission to Bolan Medical College for the academic Session 2000-2001, it is difficult to comprehend or visualize as to how the said paragraphs can be said to be violative or contrary to the provisions of any of the aforesaid Articles of the Constitution. Paragraph 3 provides for break up of the total 146 seats available in the Bolan Medical College for admission in the Session 2000-2001. According to this break up 103 seats were allocated to all the districts of the Province of Balochistan; 10 seats were allocated for merit; one seat was reserved for disabled persons, 18 seats were reserved for foreign nationals, 7 seats were reserved for FATA; 6 seats were reserved for Azad Kashmir and one seat was reserved for Northern Areas. In view of the pronouncement of this Court in Mst. Attiya Bibi Khan's case (supra) reproduced hereinafter no exception can be taken to allocation/ distribution of seats on the basis of districts, agencies and religions as well as reservation for certain classes of students. Paragraph 4 of the prospectus provided for distribution of merit seats of Bolan Medical College among 22 districts/agencies of Balochistan on population basis. As has already been observed above, as well as the observations in the case of Mst. Attiya Bibi Khan (supra) distribution of merit seats amongst districts/agencies and classification on the basis of disability, reciprocal basis, reservation for foreign nationals and for backward and underdeveloped regions would be deemed to have been done with a view to provide better and equal opportunities to the students of backward and underdeveloped areas of Districts/agencies and regions. Paragraph 4 did not deprive any deserving student from being admitted to Bolan Medical College. Thus, paragraphs 3 and 4 in no way can be said to be repugnant/violative of Articles 2-A, 22, 25 and 37-C of the Constitution of Islamic Republic of Pakistan.

10. The above allocation or distribution of seats to Districts/ Agencies or seats reserved on quota basis, such as disabled persons, foreign nationals, reciprocal basis as provided in Clauses (1) to (5) of subparagraph (c) of paragraph 3 Of the Prospectus also cannot by any stretch of imagination be said to be arbitrary, whimsical or in violation of rights

of the appellants as guaranteed by the Constitution. Similarly, paragraphs 4 and 7 of the Prospectus also provided equal opportunity to the students belonging to backward or undeveloped Districts/Areas/Agencies of Balochistan by reserving seats of every District and Agency on the basis of population of each District and Agency. By doing so the Government of Balochistan has provided access to the students of backward, less developed and down-trodden areas of the Province of Balochistan to higher education to enable them to compete with the students, persons or class of persons/students who were enjoying better social or economic status or position or were having access to higher education on the basis of such better status which opportunity or advantage would not be available to them but for the above paragraphs 3, 4, 7, 10 and 23 of the Prospectus.

11. Legality of paragraph 7 of the Prospectus of Bolan Medical College for Session 2000-2001 was examined by this Court in the case of ' Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 in the light of Articles 2-A, 22, 25 and 37-C of the Constitution and it was observed that the rationale behind distribution of seat for admission being present and classification on intelligible differentia was struck, para. 7 of the Prospectus of Bolan Medical College 2000-2001 was not ultra vires the provisions of the abovesaid articles of the Constitution. It will be appropriate to reproduce the relevant passage from this judgment as under:--

"9. It is to be observed that prior to present paragraph 7 incorporated in the Prospectus of Bolan Medical College for the year 2000-2001 candidates used to get admission on the basis of reserved quota district-wise except few seats which were earmarked for provincial merit basis but on the pronouncement of judgment in Mst. Attiyya Bibi Khan (ibid) and also taking into consideration admission of review petition referred to hereinabove the Government of Balochistan allocated seats for admission in Bolan Medical College by creating two different classes under the different circumstances namely 70% seats were earmarked for those candidates who got their education from outside their native districts and 30% seats were allocated to those candidates who got their education (Matriculation and F.Sc.) from their native districts. There is a rationale behind the distribution of seats viz. 30% and 70% namely majority of the students do manage their education including Matriculation and F. Sc. from outside their native districts like Quetta etc. where more congenial educational atmosphere is available on account , of which they receive education in altogether different circumstances comparing to the students who for lack of sufficient financial means receive

their education including Matriculation and F.Sc. within their native districts under less congenial educational atmosphere and facilities like far-flung areas of Dera Bugti etc. It is an admitted fact that the students for whom 30% seats have been allocated fall in that class/category who are left with no option but to receive education in their native districts on account of financial compulsion or some other social reasons, therefore, the allocation of the seats at the rate of 70% and 30% was made keeping in view the intelligible differentia because it was all the more necessary to accommodate those students who had received education in less congenial educational atmosphere and for such reason they cannot compete with the students who had received education of Matriculation and F.Sc. in a better and renowned educational institutions situated in urban areas like Quetta etc. It may be noted that majority of students for whom 30% seats have been allocated belong to rural areas, therefore, there were sufficient basis or reasons to create two classes for admission in Bolan Medical College one for those students who have passed their Matriculation and F.Sc. Examination from outside their native districts for the reasons mentioned hereinabove and the other for those who have received such education within their native districts. Thus we are of the opinion that the classification on intelligible differentia was struck in accordance with the pronouncement made by this Court in the cases of Mst. Attiyya Bibi Khan (ibid) and Shireen Raza and others (ibid). Therefore the learned Division Bench of Balochistan High Court had wrongly declared paragraph 7 of the Prospectus as ultra vires the provisions of Articles 22(4), 25, 37 and 38 of the Constitution."

12. The provisions of Articles 2-A, 22, 25 and 37(c) of the Constitution of Islamic Republic of Pakistan were also examined by this Court with a view to determine their object and safeguards provided to the citizens in the case of Mst. Attiyya Bibi Khan v. Federation of Pakistan through Secretary of Education (Ministry of Education, Civil Secretariat, Islamabad and others 2001 SCMR 1161 and following observations/pronouncements were made:

".... Article 25 of the Constitution unambiguously guarantees that all citizens are equal before law and are entitled to equal protection and that they shall not be discriminated on the basis of sex alone. Inter alia, Articles 2-A, 18 and 25 of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice. Needless to reiterate, there is no difference between individuals of mankind on the basis of race, colour and territory and that all human beings

are equal in the eyes of Allah as He created all from a quintessence of clay....

(7) No doubt, concept of reasonable classification has been held to be implicit in Article 25 of the Constitution which guarantees equality of citizens and equal protection of law as has been clearly explained in I.A. Sherwani's case (supra) mentioned in paragraph 5 above. Nevertheless, it is equally well-settled that the classification must be reasonable and must have been nexus with the objects sought to be achieved by such classification. What needs to be seen is whether the classification impugned before the High Court could be termed reasonable or not.

(8) Article 25 apart from stipulating equality and equal protection of law to all citizens expressly prohibits discrimination on the basis of sex and provides that the State may make special provisions for protection of women and children. Article 22 of the Constitution forbids discrimination on the grounds of race, religion, caste or place of birth in educational institutions, receiving aid from public revenue but enables a public authority to make provisions for the advancement of any socially or educationally backward class of citizens. Article 37(c) inter alia requires that the State shall make technical and professional education generally available and higher educational equally accessible to all on the basis of merit.

... Thus, reading Article 25 along with Articles 2-A, 22 and 37(c) of the Constitution would show that only such classification could be deemed reasonable which fosters the objects of the Constitution i.e. to make higher education available on merit and at the same time to accommodate the interest of the socially or economically disadvantageous sections of the people for the purpose of fostering genuine rather than nominal equality.

(10) Applying the above test special reservation in favour of doctors' sons and daughters cannot pass the test of reasonable classification. Such classification has nothing to do with the merit of a child and there is no justification to give preferential treatment to a student who happens to have been born in a doctor's family. Likewise, there is no justification, for reserving seats for children of armed forces personnel more particularly when Army Medical College, Rawalpindi should suffice to cater their needs overwhelmingly. Furthermore, such students are eligible for admission in all other colleges on the basis of their permanent residence and on the criteria of merit. Learned counsel

for the Adjutant-General, Pakistan Army, General Headquarters, having been heard by this Court at sufficient length, the grievance that this appellant had no opportunity of hearing before the High Court should come to an end.

(11) However, with respect to disabled persons and candidates from the backward and underdeveloped district and FATA, position is altogether different. It must be remembered that the concept of a reasonable classification is premised on the principle that the object is not to secure nominal or formal equality but genuine equality amongst different classes or groups of citizens ... In the same spirit Articles 22 and 25 of the Constitution permit special provision to be made for women and children or socially or educationally backward and underdeveloped classes. Therefore, reservation of seats of such category may be justified...."

13. From a bare reading of the above passages reproduced from the case of Mst. Attiyya Bibi Khan (supra) it is to be noted that this Court has categorically held that a reasonable classification/categorization with a view to provide better facilities to the students of underdeveloped and backward areas and to have right to be treated alike with students who were placed on better footings, were provided better facilities in obtaining education, and enjoyed a better and higher social and economical standard of living so as to bring them at par with elite/advanced class of a particular Province.

14. The above pronouncement completely demolish the arguments of the attorney of the appellant that distribution/allocation of seats for the districts and agencies on the basis of merit as well as Provincial merit basis and reservation of seats for disabled persons, foreign nationals and for students of other Provinces on reciprocal basis was ultra vires of the constitutional provisions as well as the principle of natural justice. His contention that the Government be directed to frame or formulate admission policy for Medical Colleges by allocating the seats on all Provincial merit basis without making any allocation or distribution of seats to various districts or other agencies of the Province has no force as this Court will not issue or give directions relating to a policy matter if the existing policy as framed or formulated on an issue whether it related to admission of students in professional colleges or any other issue of public importance provided that such policy is not found to be arbitrary, aristocratic, against any provisions of law or principles of natural justice and also not violative of the constitutional provisions relating to the various fundamental rights guaranteed to the citizens. From perusal of paragraph 10 it transpires that it provides for selection of candidates against three seats in Fatima Jinnah Girls Medical College,

Lahore to be made from among the eligible girl candidates of the Province in the manner provided in sub-paragraphs (a) (b) and (c). It is difficult to conceive as to how the manner in which selection of the girl candidates for admission to Fatima Jinnah Girls Medical College is made can be said to be violative to the provisions of Articles 2-A, 22, 25 and 37(e) of the Constitution on the principle of natural justice. As a matter of fact, it provides opportunity to all the girl students of the Province to compete with each other on District basis. This paragraph also cannot be said to be repugnant to the provisions of any of the above Articles. Paragraph 23 of the Prospectus lays down the minimum qualification for a candidate's admission to M.B.,B.S./B.D.S. class to be Intermediate Science (Pre-medical) examination from the Board of Intermediate and Secondary Education, Balochistan, Quetta or any recognized Board or University. It is beyond comprehension how this paragraph can be said to be repugnant to or violative of any of the afore-stated Article 2-A, 22, 25 or 37(e) of the Constitution.

15. The contention of the appellant's attorney relating to the illegality or violation of constitutional provisions in bifurcating/dividing District Quetta into urban and rural area does not carry weight requiring consideration as even by treating the whole of District Quetta as urban area the appellant would not stand to gain anything as being placed at Serial No.34 in the merit list of the students for Quetta District would not succeed in getting admission against one of the ten seats allocated to Quetta District irrespective of the fact whether they are treated as 10 seats of the Urban Quetta District or divided into 7 and 3 seats on the basis of Quetta Urban and Quetta Rural. However, Quetta having been declared as urban area it could not perhaps be divided into urban and rural areas by declaring the slums or the less developed areas of District Quetta as rural areas.

16. The next contention advanced by the attorney of the appellant was that about 75 students who had secured lesser marks than the appellant, who on account of their lesser percentage did not qualify were allowed to appear in the entry test and failed to qualify the entry test were provided admission in Bolan Medical College solely on the basis of allocation/distribution of seats to the Districts/Agencies of the Province. He further submitted that had the Government framed or provided a policy for admission to Bolan Medical College solely on Provincial merit without distribution/allocation of seats to the Districts and Agencies, then the appellant who is student at Serial No.74 of all Provincial merit list would have succeeded in getting admission as there were about 116 seats available in the session for the year 2000-2001. In this context, it is to be seen that neither the names of those 75 students have been mentioned nor there is any material on record to substantiate the contention that

they had obtained lesser percentage of marks in the entry test, or they were not legible to appear in the entry test or that they failed to qualify the entry test. Secondly such students were neither joined in the constitutional petition filed by the appellant before the Balochistan High Court nor they have been arrayed in this appeal as such in tilt absence of such persons, no adverse action or order can be passed as held by this Court in the case of Shireen Raza and others v. Federation of Pakistan 2002 SCMR 1218. In a large number of cases this Court has held that no adverse order can be passed against any person in violation of the principle of natural justice without affording an opportunity of hearing and such an order would be a void order rendering all subsequent proceedings illegal.

17. The next contention advanced by the attorney of the appellant was that seeking education of one's choice was a fundamental right guaranteed to every citizen by the Constitution of Pakistan and this Court as guardian of the fundamental rights would not allow violation of such right on account of any arbitrary, illegal or unconstitutional action of the Government or any public functionary. He further submitted that the admission policy framed or provided by the Government of Balochistan being arbitrary, whimsical and against the provisions of Articles 2-A, 22, 25 and 37(c) of the Constitution had illegally and wrongly deprived the appellant from obtaining admission in Bolan Medical College as a result of which she was deprived of her constitutional right of seeking medical education and had resulted in great injustice and inconvenience to her for the redress of which this Court can order creation of a special seat in Bolan Medical College to provide admission to the appellant. The contention advanced by the appellant is devoid of force. The above course was adopted by Lahore High Court in a constitutional petition filed by a student who had failed to obtain admission in a medical college and on the orders of Lahore High Court, admission was given to him by providing/creating a special scat in the First Year M.B.,B.S. Class by the Government of Punjab. The Principal of the concerned Medical College had assailed the order of the Government before this Court in the case of The Chairman Selection Committee, Bolan Medical College, Quetta and others v. Miss Safia Hameed and others 1979 SCMR 529 and this Court disapproved the action of the Lahore High Court in ordering creation of seat for absorbing the affected student and set aside the order holding that such cause was not within lawful authority of the High Court.

18. For the foregoing facts, discussion and reasons, this civil appeal is found to be without any substance. The learned Division Bench of the Balochistan High Court had rightly dismissed the constitutional petition of the appellant and no ground has been made out for interference with

the said judgment. Accordingly, this appeal is dismissed with no order as to costs.

(Sd.) Sardar Muhammad Raza
Khan, J

(Sd.) Saiyed Saeed Ashhad, J

I have added my dissenting note.

(Sd.) Muhammad Nawaz
Abbasi, J

MUHAMMAD NAWAZ ABBASI, J--- I have the privilege to go through the judgment authored by learned brother Saiyed Saeed Ashhad, J. and being of the different view on the question of allocation of District-wise quota, would like to add my separate note.

2. The controversy involved in the present appeal relates to the policy of admission in M.B.,B.S. course in the 1st year in Bolan Medical College, Quetta, (hereinafter called "the college") on the basis of allocation of seats for each District in the Province. The appellant herein applied for admission in the 1st year M.B.,B.S. Course for the session 2001-2002 against the reserved seats of District Quetta and having obtained 61.90% marks, secured 34th position in the merit list of District Quetta whereas in the general merit list, she was at serial No.74 and her grievance was that as per her merits in the general list, she was entitled to admission as 75 candidates, below to her in overall merit position, have been given admission due to the District-wise allocation of seats. The selection process on the basis of District-wise quota in consequence to which the appellant despite having secured highest position on the combined merit list, failed to get admission in the Bolan Medical College, Quetta, was challenged by her in a constitutional petition in the High Court of Balochistan at Quetta seeking a declaration that certain provisions in the prospectus containing admission policy for the Session 2001-2002 being unreasonable and discriminatory were unconstitutional. She also asserted that the Scheme of District Quetta and bifurcation of quota of District Quetta into urban and rural was in utter disregard to the law laid down by this Court in Attiya Bibi Khan v. Federation of Pakistan and others 2001 SCMR 1161 and pleaded that she has been deprived of her legitimate right of admission in the medical college as per her entitlement on the basis of open merit and in complete departure to the mandate of the Constitution of equal protection and fair treatment. The learned Division Bench of the High Court, seized of the matter, dismissed the writ petition with the observation that the policy of District-wise allocation of seats for admission in the medical college was upheld by the

Supreme Court of Pakistan in the case of Abdul Baqi v. Muhammad Akram PLD 2003 SC 163 and even if the reserved quota of District Quetta was to be abolished, the appellant would not be able to get admission on merits.

3. The Government of Balochistan in pursuance of the judgment of this Court in Attiya Bibi Khan v. Federation of Pakistan 2001 SCMR 1161, changed the policy of admission in the prospectus of the Bolan Medical College with the ratio of 70% and 30% as under:

Old Policy	New Policy
(1) 7(A) 70% seats shall be allocated to those candidates who got their education (Matric and F.Sc.) from outside their native District.	7(A) 70% seats shall be allocated to those local and domicile candidates who got their education (Matric and F.Sc.) from within and outside their native District.
(2) 7(B) 30% seats shall be allocated to those candidates to who got their education (Matric and F.Sc.) from their native District.	7(B) 30% seats shall be allocated those local and domicile candidates who got their education (Matric and F.Sc.) from their native District.

4. The above amendment was struck down by the High Court on the ground of unreasonableness and being in conflict to the law laid down by this Court in Attiya Bibi Khan's v. Federation of Pakistan 2001 SCMR 1161 and subsequently the controversy was resolved in Abdul Baqi's case (supra). The leave was granted in the appeal to consider inter alia the following questions:

(i) Whether the incorporation of clauses (3), (4), (7), (10), (23) and introduction of classification between the candidates of Quetta urban and Quetta rural of the impugned prospectus of the Bolan Medical College, Quetta, are discriminatory, violative of the provisions of Articles 2-A, 22, 25 and 37-C of the Constitution of Islamic Republic of Pakistan and the law laid down by this Court in the cases of Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary of Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR '1161, Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163.

(ii) Whether it was necessary for the petitioner to implead, in the writ petition, all other candidates who had secured lesser marks

than him and were admitted to M.B.,B.S. First Professional Examination course on quota basis."

5. The grievance of the appellant before the High Court was that admission policy on the basis of District-wise quota was violative of the law laid down by this Court in Attiya Bibi Khan's case and also Articles 4, 22(4), 25 and 37 of the Constitution and admission policy in departure to the rule of open merit was unconstitutional. In consequence to which she was deprived of her legitimate right of admission on the basis of her position in the combined merit list. The appellant asserted that a large number of candidates who were not entitled to get admission in the medical colleges on open merit have been given admission on the basis of District-wise allocation of seats in preference to the candidates with higher position in the list prepared on the basis of open merits.

It may be noted that in Attiya Bibi Khan's case (supra), the admission policy on the basis of quota system, except in certain cases mentioned therein was held unconstitutional whereas in the subsequent judgment in Abdul Baqi's case, this Court without taking a different view, reversed the judgment of High Court of Balochistan in which the admission on the basis of quota system was held not legal.

6. This Court in Attiya Bibi Khan's case by majority view, held that "disabled persons within the meaning of Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 (Ordinance XL of 1981), students domiciled in FATA, the standard of underdeveloped districts as well as Azad Kashmir and Northern Areas, Afghan Refugees who have taken school and intermediate education in educational institutions situated within those areas, and students of foreign countries on reciprocal basis for a period of seven years for the time being, the standard of reservation of seats in the medical colleges for all other categories was illegal and without lawful authority. It was observed that Articles 22(a) and 25 of the Constitution undoubtedly permit for making special provisions for women, children or socially and educationally backward and underdeveloped classes and areas, therefore, the policy of admission in medical colleges by reserving certain percentage of seats for such categories of persons may be justified. It was also observed that benefit of such reservation must be confined to the genuine candidates and students belonging to backward and under developed areas duly notified by the Government. In view thereof, except the special categories pointed out therein, the reservation of quota for any other category would be unreasonable, unfair and in disregard to the principle of equality and equal protecting of law as envisaged in Article 22(4) and 25 of the Constitution that all persons facing similar circumstances in similar situation, must be dealt with in the same manner. However, the principle

of equality is subject to the reasonable classification which means that it should be based (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and (b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

7. The concept of equal protection of law envisages that a person or class of persons shall not be denied the rights, which are enjoyed by other persons in the same situation. In *Abdul Baqi v. Muhammad Akram* PLD 2003 SC 163 it was held that under Articles 22(4) and 25 of the Constitution, public authority may make provisions for advancement of backward classes of citizens without any discrimination on account of race, caste, sex, social or official status, economic condition, place of birth or residence. In this judgment it was also held that allocation of seats in Bolan Medical College on the basis of classification of intelligible differentia made in para. 7 of the prospectus for the Session 2000-2001 was not ultra vires to the provisions of Articles 22(4), 25, 37 and 38 of the Constitution. The relevant portion of the judgment is reproduced as under:

"It is to be observed that prior to present paragraph 7 incorporated in the Prospectus of Bolan Medical College for the year 2000-2001 candidates used to get admission on the basis of reserved quota district-wise except few seats which were earmarked for provincial merit basis but on the pronouncement of judgment in *Mst. Attiya Bibi Khan* (ibid) and also taking into consideration admission of review petition referred to hereinabove the Government of Balochistan allocated seats for admission in Bolan Medical College by creating two different classes under the different circumstances namely 70% seats were earmarked for those candidates who got their education from outside their native districts and 30% seats were allocated to those candidates who got their education (Matriculation and F.Sc.) from their native districts. There is a rationale behind the distribution of seats viz. 30% and 70% namely majority of the students do manage their education including Matriculation and F.Sc. from outside their native districts like Quetta etc. where more congenial educational atmosphere is available on account of which they receive education in altogether different circumstances comparing to the students who for lack of sufficient financial means receive their education including Matriculation and F.Sc. within their native districts under less congenial educational atmosphere and facilities like flung areas of Dera Bugti etc. It is an admitted fact that the students for whom 30% seats have been allocated fall in that class/category who are left with no option but to receive or

some other social reasons, therefore, the allocation of the seats at the rate of 70% and 30% was made keeping in view the intelligible differentia because it was all the more necessary to accommodate those students who had received education in less congenial education atmosphere and for such reason they cannot compete with the students who had received education of Matriculation and F.Sc. in a better and renowned educational institutions situated in urban areas like Quetta etc. It may be noted that majority of students for whom 30% seats have been allocated belong to rural areas, therefore, there were sufficient basis or reasons to create two classes for admission in Bolan Medical College one for those students who have passed their Matriculation and F.Sc. Examination from outside their native districts for the reasons mentioned hereinabove and the other for those who have received such education within their native districts. Thus we are of the opinion that the classification on intelligible differentia was struck in accordance with the pronouncement made by this Court in the cases of Mst. Attiyya Bibi Khan (ibid) and Shireen Raza and others (ibid). Therefore the learned Division Bench of Balochistan High Court had wrongly declared paragraph 7 of the Prospectus as ultra vires the provisions of Articles 22(4), 25, 37 and 38 of the Constitution."

8. The ratio of the judgments of this Court in Attiya Bibi Khan v. Federation of Pakistan 2001 SCMR 1161 and Abdul Baqi v. Muhammad Akram PLD 2003 SC 163 is that except in the certain cases mentioned therein, the reservation of seats separately for each District in the Province is not in consonance with the concept of reasonable classification. This Court in I.A. Sherwani v. Government of Pakistan 1991 SCMR 1041 has laid down the certain principles as to the reasonableness of the classification. This is settled proposition of law that reasonable classification must be based on an intelligible differentia, which distinguishes the individuals or one group of persons from other group in a particular set of circumstances. The reasonable classification must be found on reasonable basis and must have rational nexus to the object sought to be achieved by such classification. There is general presumption of constitutionality of the principle regarding reasonable classification but no such presumption can be carried if there is nothing on the face of the law and the surrounding circumstances on the basis of which reasonableness of classification can be regarded.

9. The Court has to see the validity of a rule in context to the justness of classification and reasonable classification in the present case, would be justified in respect of the quota to the extent of backward areas and the classes of persons identified by law based on intelligible differentia and

the object of law laid down by this Court in the judgments referred above but reservation of separate seats for each District in departure to the concept of open merits and free competition was unjust and unreasonable. The principle that all persons in similar circumstances, should be treated and dealt with in the alike manner may be defeated if the particular legislation tends to create an arbitrary discretion or unreasonable discrimination. In the light of well-settled law that classification on the basis of intelligible differentia must be reasonable and must have nexus with the object sought to be achieved, the reservation of seat in the Medical Colleges for every District without any justification in law is in disregard to the merit policy which is neither in consonance with the natural justice as ordained by the Holy Qur'an and Sunnah nor in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan. In the prospectus of Bolan Medical College for admission in the first year M.B.,B.S. course for the Session 2000-2001, a specific quota has been allocated for each district in preference to the open competition of the seats of the ratio of 70% and 30% without any distinction and District-wise distribution. The District-wise allocation of seats would only be justified if every District of the Province of Balochistan would have been declared and notified by the Government as backward area and similarly the division of District Quetta into rural' and urban and separate allocation of seats for Quetta rural and Quetta urban was without any justification. The allocation of seats for each District of Balochisian may have some political or other reason behind, but it is not based on the principle of reasonable classification as the fixation of District-wise quota in the prospectus had neither any nexus with the actual state of affairs nor was in the spirit of Articles 22(4) and 25 of the Constitution. The general policy of allocating seats for each District of the Province was against the law laid down by the Court in Attiya Bibi Khan's case and also being not based on intelligible differentia, is in conflict to the principle of equality and as well as the rule of open merit in consequence to which the legitimate right of students who having secured highest marks competed the open merit have been deprived. In principle the judgment in Abdul Baqi's case, was not as such distinguishable to the judgment in Attiya Bibi Khan's case nor the District-wise allocation of seats and bifurcation of District Quetta into urban and rural was as such declared constitutional. The rational behind the allocation of separate seats for two different classes, i.e. 70% seats for the candidates who got their education from outside their native districts and 30% for those who got their premedical education from their native districts is understandable but further District-wise distribution of seats was not justified in law and similarly the allocation of separate seats for Quetta rural and Quetta urban was even in violation of clause (f) of para.7 of the prospectus.

10. In the light of foregoing reasons, I am of the considered view that the reservation of separate seats for each district and bifurcation of Quetta District in rural and urban was in violation of Articles 22(4) and 25 of the Constitution and was not in consonance with the law laid down by this Court in *Attiya Bibi Khan v. Federation of Pakistan* 2001 SCMR 1161 and *Abdul Baqi v. Muhammad Akram* PLD 2003 SC 163 and consequently paragraph 4 and with clauses (d) and (e) of paragraph 7 are unreasonable and unconstitutional. In consequence thereto, I hold that the appellant was wrongly deprived of her legitimate right of admission in 1st year M.B.,B.S. course in Bolan Medical College, Quetta for the session 2001-2002. It may be noted that the students who were given admission in first year M.B.,B.S. Professional Course on the basis of District quota were neither party in the writ petition nor they were responsible for the wrong done by the respondents, therefore, the respondents could conveniently accommodate the petitioner who has been vigilantly pursuing the concerned forum for her right without disturbing any other student, by allocating an extra seat instead of justifying their action at the cost of career of a poor student.

11. In the light of foregoing discussion, I allow this appeal to the extent of right of admission of appellant in the first year M.B.,B.S. course in the Session 2001-2002 in the Bolan Medical College, Quetta on the basis of open merit. There is no order as to costs.

Order of the Court

By majority of 2 to 1 the appeal is dismissed.

M.H./S-75/SC Appeal dismissed.

